

2708
No. 13061

United States
Court of Appeals
for the Ninth Circuit.

EDMUND E. SUNDWALL,

Appellant,

VS.

PACIFIC FAR EAST LINE, INC., a Corpora-
tion, Sued Herein as PACIFIC FAR EAST
STEAMSHIP COMPANY,

Appellee.

Apostles on Appeal

Appeal from the United States District Court for the
Northern District of California,
Southern Division.

FILED

NOV - 7 1951

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF PROCTORS

BELLI, ASHE & PINNEY,

240 Stockton St.,

San Francisco 8, Calif.,

Proctors for Appellant.

DORR, COOPER & HAYS,

1505 Merchants Exchange Bldg.,

San Francisco 4, Calif.,

Proctors for Appellee.

In the Southern Division of the United States
District Court for the Northern District of
California

No. 25546 G

EDMUND E. SUNDWALL,

Plaintiff,

vs.

PACIFIC FAR EAST STEAMSHIP COMPANY,
FIRST DOE and SECOND DOE,

Defendants.

**LIBEL BY SEAMAN UNDER SPECIAL RULE
FOR SEAMEN TO SUE WITHOUT PRE-
PAYMENT OF COSTS OR FEES FOR EN-
FORCEMENT OF LAWS OF THE UNITED
STATES, PROTECTION OF HEALTH AND
SAFETY AT SEA**

To the Honorable Judges of the District Court of
the United States for the Northern District
of California:

Now comes Edmund E. Sundwall and as and for
his libel in personam brought pursuant to the pro-
visions of the Jones Act, 33 Merchant Marine Act
of June 5, 1920, 46 U.S. Code 688, and other good
law, equity and admiralty, alleges as follows:

I.

That at all times herein mentioned, Pacific Far
East Steamship Company, First Doe and Second
Doe were corporations doing business within the

jurisdiction of this court and owned, operated, controlled, supervised and managed that certain ship, the SS Iran Victory.

II.

That at all times herein mentioned, the libellant was a seaman employed by respondents and acting in the scope of his employment aboard the said SS Iran Victory.

III.

That on or about the 28th day of April, 1949, while the said SS Iran Victory was on the high seas, respondents so negligently and carelessly maintained, managed and controlled said vessel as to cause oil, which libellant was then and there engaged in transferring from a drum to a five-gallon can, to splash upon and enter libellant's left eye; that by reason thereof libellant sustained the damages and injuries hereinafter set forth.

IV.

That by reason of the premises, and as a proximate result thereof, libellant sustained permanent and severe injuries to his said left eye, and is informed and believes, and upon such information and belief alleges that he may lose the sight thereof.

V.

That by reason of said injuries, libellant was confined to the hospital and his house for a long period of time; has suffered, and will suffer, pain, agony and mental anguish; has lost and will lose large sums of money which he otherwise would have

earned as wages; has been permanently injured, and will be unable to pursue his usual occupation because of permanent injuries, all to his damage in the sum of Sixty-five Thousand Dollars (\$65,000.00).

VI.

That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States of America and of this Honorable Court.

As and for a Second, Separate and Distinct Cause of Action, Libellant Further Alleges:

I.

Incorporates by reference the allegations contained in Paragraphs I, II, IV, V and VI of libellant's First Cause of Action as if the same were set forth at length herein.

II.

That on or about the 28th day of April, 1949, respondents did maintain said vessel and its gear in an unseaworthy condition in that they failed to provide pumps for the transfer of oil from an oil drum to a five-gallon can; that while libellant was engaged in transferring oil pursuant to orders given him by his supervisors aboard said vessel, the oil was caused to and did splash upon and enter his left eye; that by reason of the premises libellant sustained the injuries and damages herein set forth.

Wherefore, libellant prays that respondents be required to appear and answer all and singular the

matters aforesaid and that libellant may have a decree for damages in the amount of Sixty-five Thousand Dollars (\$65,000.00), together with costs and disbursements of this action.

/s/ VAN H. PINNEY,
Proctor for Libellant.

State of California,
City and County of San Francisco—ss.

Edmund E. Sundwall, being first duly sworn, deposes and says:

That he is the libellant in the above-entitled action; that he has read the foregoing libel, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated on his information and belief and as to those matters he believes it to be true.

/s/ EDMUND E. SUNDWALL.

Subscribed and sworn to before me this 16th day of October, 1949.

[Seal] /s/ ABRAHAM RABINOWITCH,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsed]: Filed November 17, 1949.

[Title of District Court and Cause.]

ANSWER OF DEFENDANT, PACIFIC
FAR EAST LINE, INC.

To the Honorable, the Judges of the Above-Entitled
Court:

The answer of Pacific Far East Line, Inc., a corporation, sued herein as Pacific Far East Steamship Company, to the libel herein admits, denies and alleges as follows:

I.

Answering the allegations of article I of said libel, admits that defendant Pacific Far East Line, Inc., was at all times therein mentioned a corporation doing business within the jurisdiction of this court and operated, controlled, supervised and managed the steamship Iran Victory. Denies each and every, all and singular, the remaining allegations of said article I.

II.

Answering the allegations of article II of said libel, denies each and every, all and singular, the allegations contained therein, except that it is admitted that plaintiff was a seaman employed by the defendant on board the steamship Iran Victory.

III.

Denies each and every, all and singular, the allegations contained in article III of said libel.

IV.

Denies each and every, all and singular, the allegations contained in article IV of said libel.

V.

Denies each and every, all and singular, the allegations contained in article V of said libel, particularly denies that plaintiff has been damaged in the sum of \$65,000.00, or in any sum or at all by reason of any alleged injuries as alleged in said libel.

VI.

Denies each and every, all and singular, the allegations of article VI of said libel, except that the admiralty and maritime jurisdiction of this court is admitted.

Further answering and as an affirmative defense to the libel herein, defendant, Pacific Far East Line, Inc., alleges as follows:

I.

Upon information and belief that if plaintiff was injured as alleged in said libel while on board the steamship Iran Victory, said plaintiff was negligent and careless and failed to take proper or any precautions for his own safety and that his said negligence and carelessness and failure to take proper precautions was a proximate cause of said alleged injuries and of the alleged damages and proximately contributed thereto.

Answering the second, separate and distinct alleged cause of action, defendant, Pacific Far East Line, Inc., admits denies and alleges as follows:

I.

Answering the allegations of article I of said

second, separate and distinct alleged cause of action, refers to and by such reference incorporates herein the denials, admissions and allegations of said defendant's foregoing answer to articles I, II, IV, V and VI of plaintiff's first alleged cause of action, and makes the same defendant's answer to the allegations of article I of plaintiff's second, separate and additional alleged cause of action.

II.

Denies each and every, all and singular, the allegations contained in article II of said second, separate and distinct alleged cause of action.

Further answering and as an affirmative defense to the second, separate and distinct alleged cause of action, defendant, Pacific Far East Line, Inc., alleges as follows:

I.

Upon information and belief, that if plaintiff was injured as alleged in said libel while on board the steamship Iran Victory, said plaintiff was negligent and careless and failed to take proper or any precautions for his own safety and that his said negligence and carelessness and failure to take proper precautions was a proximate cause of said alleged injuries and of the alleged damages and proximately contributed thereto.

Wherefore defendant, Pacific Far East Line, Inc., prays that plaintiff take nothing by his libel herein, that the same be dismissed with costs to defendant

and that said defendant may have such other and further relief as may be just and equitable in the premises.

DORR, COOPER & HAYS,
Proctors for Defendant,
Pacific Far East Line, Inc.

United States of America,
State of California,
City and County of San Francisco—ss.

J. P. Wagner, being first duly sworn, deposes and says:

That he is an officer, to wit, Vice President of Pacific Far East Line, Inc., a corporation, one of the defendants in the above-entitled action and makes this verification for and on behalf of said defendant; that the same is true of his own knowledge, except as to those matters which are therein stated upon information and belief and that as to those matters, he believes it to be true.

/s/ J. P. WAGNER.

Subscribed and sworn to before me, this 23rd day of January, 1950.

[Seal] /s/ EDITH GOEWBY,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires Dec. 24, 1952.

Receipt of copy acknowledged.

[Endorsed]: Filed January 23, 1950.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled cause came on regularly for trial on the 14th day of February, 1951, in the above-entitled court, Honorable Edward P. Murphy, United States District Judge, presiding, and the trial continued until February 15, 1941; Van H. Pinney, Esq., of the firm of Belli, Ashe & Pinney, proctors for libelant, appearing for the libelant, and Jay T. Cooper, Esq., of the firm of Dorr, Cooper & Hays, proctors for respondent, Pacific Far East Line, Inc.; appearing for respondent, Pacific Far East Line, Inc.; and the cause having been submitted for decision, the Court makes the following findings of fact and conclusions of law:

I.

That at all times mentioned in said cause, respondent, Pacific Far East Line, Inc., was a corporation doing business within the jurisdiction of this Court and owned, operated, controlled and managed the steamship Iran Victory.

II.

That at all times mentioned in said cause, libelant was a seaman employed by respondent, Pacific Far East Line, Inc., and was acting in the scope of his employment on board the steamship Iran Victory.

III.

That on the 28th day of April, 1949, while the Iran Victory was on the high seas, libelant, while

working in the course of his employment, was, together with two other seamen, engaged in taking oil from an iron oil drum on the main deck and putting it in a five-gallon bucket—this for the purpose of painting. That at said time some of the oil splashed in libelant's face and some of the drops got into libelant's left eye. That at the time this occurred, the oil drum was being tipped so that the oil ran out of the bung and into the bucket which libelant was holding. That libelant took the bucket of oil to the place where it was to be used and thereafter washed his face and eye. That libelant then returned to work and worked during the rest of his watch. At some subsequent time (the evidence does not establish definitely whether it was the following day or several days thereafter), libelant went to the purser for attention, and the purser washed out libelant's eye with an eye cup. That libelant continued to stand his regular watches for several days after the mishap occurred. That during said period the sight of libelant's left eye deteriorated and he was sent to a hospital ashore upon arrival at the next port of call. That at the time of the trial libelant had lost substantially all of the sight of his left eye.

IV.

That previous to the mishap on board the steamship *Iran Victory* libelant had been troubled with poor vision in his left eye for a variety of reasons.

V.

That libelant did not prove that it was the custom or practice to provide a pump to remove oil from iron drums on the decks of such vessels.

VI.

That libelant did not prove that it was the custom or practice to provide a rack for use in removing oil from iron drums on the decks of such vessels.

VII.

That libelant did not prove it was negligence on the part of respondent to fail to provide a pump for use in removing or drawing off oil from an iron drum on the deck of said vessel.

VIII.

That libelant did not prove that it was negligence on the part of respondent to fail to provide a rack for use in removing or drawing off oil from an iron drum on the deck of said vessel.

IX.

That the steamship *Iran Victory* was not unseaworthy by reason of failure on the part of respondent to provide a pump for use in removing or drawing off oil from an iron drum on the deck of said vessel.

X.

That the steamship *Iran Victory* was not unseaworthy by reason of failure on the part of respondent to provide a rack for use in removing or draw-

ing off oil from an iron drum on the deck of said vessel.

XI.

That the failure of respondent to provide a pump for use in drawing off or removing oil from an iron drum on the deck of said vessel was not a proximate cause of the splashing of oil in libelant's said eye.

XII.

That the failure of respondent to provide a rack for use in drawing off or removing oil from an iron drum on deck of said vessel was not a proximate cause of the splashing of oil in libelant's said eye.

XIII.

That respondent was not negligent in directing libelant and two fellow seamen to take oil out of an iron drum on deck when neither a pump nor a rack for that purpose was available.

XIV.

That libelant has not proved that respondent was negligent in any of the respects alleged in the libel.

XV.

That libelant has not proved that respondent's vessel was unseaworthy in any of the respects alleged in the libel.

XVI.

That the taking of oil by three men out of an iron drum on the deck of a vessel by tipping it over is a simple operation.

XVII.

That any injury to libelant's left eye was either a simple accident or was due solely to libelant's own negligence in holding his face close to the bucket.

The Court does not find it necessary to make any findings as to whether the loss of sight in libelant's left eye was caused by the oil which got into it or was due to some other cause, and therefore makes no finding on that question.

Conclusions of Law

I.

That respondent, Pacific Far East Line, Inc., was not negligent by reason of failure to provide a pump for use in removing oil from an iron drum on the deck of the steamship Iran Victory.

II.

That respondent, Pacific Far East Line, Inc., was not negligent by reason of failure to provide a rack for use in removing oil from an iron drum on the deck of said vessel.

III.

That the steamship Iran Victory was not unseaworthy by reason of the failure of respondent to provide a pump for use in removing oil from an iron drum on the deck of said vessel.

IV.

That the steamship Iran Victory was not unseaworthy by reason of the failure of respondent to provide a rack for use in removing oil from an iron drum on the deck of said vessel.

V.

That the failure of respondent, Pacific Far East Line, Inc., to provide a pump for use in removing oil from an iron drum on the deck of the steamship Iran Victory was not a proximate cause of the libelant's getting oil in his eye.

VI.

That the failure of respondent, Pacific Far East Line, Inc., to provide a rack for use in removing oil from an iron drum on the deck of the steamship Iran Victory was not a proximate cause of the libelant's getting oil in his eye.

VII.

That libelant take nothing by reason of his first alleged cause of action of said libel.

VIII.

That libelant take nothing by reason of his second alleged cause of action of said libel.

IX.

That respondent is entitled to the entry of a decree in its favor and to costs of suit herein incurred.

Dated this 9th day of April, 1951.

Approved as to form:

.....,
Proctors for Libelant.

/s/ EDWARD P. MURPHY,
United States District Judge.

Lodged April 2, 1951.

[Endorsed]: Filed April 9, 1951.

In the Southern Division of the United States
District Court for the Northern District of
California in Admiralty

No. 25546-G

EDMUND E. SUNDWALL,

Libelant,

vs.

PACIFIC FAR EAST LINE, Inc., a Corporation,
et al.,

Respondents.

FINAL DECREE

The above-entitled cause having duly come on to be heard on the 14th of February, 1951, in the above-entitled court, Honorable Edward P. Murphy, United States District Judge, presiding, and the trial having been continued to and concluded on February 15, 1951; Belli, Ashe & Pinney and Van H. Pinney, Esq., appearing as proctors for libelant Edmund E. Sundwall, and Dorr, Cooper & Hays and Jay T. Cooper, Esq., appearing as proctors for respondent Pacific Far East Line, Inc.; and evidence both oral and documentary having been introduced and the cause argued and submitted for decision, and the Court after due deliberation having rendered its decision; and it appearing to the Court that there is no basis for establishing liability on the part of respondent Pacific Far East Line, Inc., and the Court having heretofore duly made and caused to be filed herein its findings of fact and conclu-

sions of law and having concluded that said respondent is entitled to entry of decree in its favor, and it appearing that said respondent has expressly waived costs taxable to date by said respondent,

Now Therefore, It Is Hereby Ordered, Adjudged and Decreed:

1. That libelant, Edmund E. Sundwall, take nothing under the libel filed herein from respondent, Pacific Far East Line, Inc.

2. That said libel be dismissed.

3. That said respondent, Pacific Far East Line, Inc., have judgment against libelant without costs.

Done in open court this 9th day of April, 1951.

/s/ EDWARD P. MURPHY,

Judge of the United States
District Court.

Receipt of Copy acknowledged.

Lodged April 4, 1951.

Entered April 10, 1951.

[Endorsed]: Filed April 9, 1951.

[Title of District Court and Cause.]

NOTICE OF APPEAL PURSUANT TITLE
28 USCA, SECTION 2107

To the Clerk of the Above-Entitled Court:

To Dorr, Cooper & Hays, Esqs., Proctors for Respondent, and to Pacific Far East Steamship Company, Respondent.

You and Each of You Will Please Take Notice that the libelant in the above-entitled action, Edmund E. Sundwall, does hereby appeal to the Honorable Judges of the United States Court of Appeals for the Ninth Circuit from the Final Decree and Judgment of the Honorable Edward P. Murphy, entered herein upon the 10th day of April, 1951, and from all of it.

BELLI, ASHE & PINNEY,

By /s/ VAN H. PINNEY,
Proctors for Libelant.

Receipt of Copy acknowledged.

[Endorsed]: Filed July 6, 1951.

[Title of District Court and Cause.]

PETITION FOR APPEAL

To the Honorable Edward P. Murphy, District Judge:

Comes now libelant Edmund E. Sundwall, in the above-entitled action and respectfully shows the court that:

I.

Petitioner is the libelant in the above-entitled action.

II.

Heretofore on April 10, 1951, this Honorable Court entered its Findings of Fact and Conclusions of Law in this case.

III.

On April 10, 1951, judgment and final decree were entered in favor of respondent Pacific Far East Steamship Company and libelant's libel was ordered dismissed; until the aforesaid date, no final decree of dismissal was entered; this petition is made timely and within the statutory time allowed under 28 U.S.C.A. Section 2107, in Admiralty Cases.

IV.

Libelant desires to appeal from the judgment and final decree of this Honorable Court to the United States Court of Appeals for the Ninth Circuit and is prepared to post bond in the sum of \$250.00 or such other reasonable bond as the Court may direct; that said appeal is not frivolously taken.

V.

Libelant will set forth Assignment of Errors pursuant to Rule 35, Rules in Admiralty, United States Court of Appeals for the Ninth Circuit.

Wherefore, petitioner prays order of this Court allowing appeal to the United States Court of Appeals for the Ninth Circuit upon such terms as the court may direct.

/s/ EDMUND E. SUNDWALL,
Libelant.

BELLI, ASHE & PINNEY,
Proctors for Libelant.

State of California,
City and County of San Francisco—ss.

Edmund E. Sundwall, being first duly sworn, deposes and says:

That he has read the foregoing; that the same is true of his own knowledge except as to those matters stated therein on information and belief and to those matters he alleges he believes in their truth.

/s/ EDMUND E. SUNDWALL.

Subscribed and sworn to before me this 7th day of July, 1951.

[Seal] /s/ MARION M. BENDER,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires December 25, 1954.

[Endorsed]: Filed July 6, 1951.

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

The verified Petition for Appeal in the above-entitled matter having come before this court on the 6th day of July, 1951, and it appearing to the court that said petition has been made within the statutory time permitted for appeals in Admiralty under Title 28 U.S.C.A., Section 2107, and it further appearing that libelant has filed herein an Assignment of Errors pursuant to Rule 35, Rules in Admiralty, United States Court of Appeals for the Ninth Circuit, and the court being satisfied that said appeal is not frivolous,

It is Ordered, Adjudged and Decreed that libelant Edmund E. Sundwall be and he is hereby authorized to prosecute his appeal to the United States Court of Appeals for the Ninth Circuit upon posting with the Clerk of the District Court of the United States security bond in the sum of \$250.00.

/s/ EDWARD P. MURPHY,
U. S. District Court Judge.

[Endorsed]: Filed July 6, 1951.

[Title of District Court and Cause.]

CITATION ON APPEAL

United States of America—ss.

The President of the United States of America
To Pacific Far East Steamship Company, Respond-
ent, and Dorr, Cooper & Hayes, Esqs., its
Proctors, Greeting:

You Are Hereby Cited and Admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within 40 days from the date hereof pursuant to an order allowing an appeal, of record in the Clerk's Office of the United States District Court for the Northern District of California, Southern Division, wherein Edmund E. Sundwall, appellant, and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

July 6, 1951.

/s/ EDWARD P. MURPHY,
United States District Judge.

[Endorsed]: Filed July 6, 1951.

[Title of District Court and Cause.]

COST BOND ON APPEAL

Whereas, the above-named Edmund E. Sundwall has appealed to the United States Court of Appeals for the Ninth Circuit from the Judgment entered against him in said action, in the United States District Court, in and for the Northern District of California, Southern Division.

Now, Therefore, in consideration of the premises, and of such appeal, the undersigned, Maryland Casualty Company, a corporation duly organized and existing under the laws of the State of Maryland, and duly authorized to transact a general surety business in the State of California, does undertake and promise on the part of the appellant, to secure the payment of costs if the appeal is dismissed, or the judgment affirmed, or such costs as the Appellate Court may award if the judgment is modified, not exceeding the sum of Two Hundred Fifty (\$250.00) Dollars, to which amount it acknowledges itself bound.

It is expressly agreed by the Surety that in case of a breach of any condition hereof, the above-entitled Court, may upon notice to the Surety of not less than ten (10) days proceed summarily in the above-entitled action in which this bond is given, to ascertain the amount which the Surety is bound to pay on account of such breach and render judgment therefore against the Surety and award execu-

tion therefore, all as provided by and in accordance with the intent and meaning of rule 34 of the Rule of Practice of the United States District Court in and for the Northern District of California.

In Witness Whereof, the corporate seal and name of the said Surety Company is hereto affixed and attested at San Francisco, California, by its duly authorized officer, this 13th day of July, 1951.

MARYLAND CASUALTY
COMPANY,

By /s/ ARTHUR J. CLEMENT, JR.,
Attorney-in-Fact.

State of California,
City and County of San Francisco—ss.

On this 13th day of July, 1951, before me, A. McClintock, a Notary Public in and for the City and County of San Francisco, personally appeared Arthur J. Clement, Jr., known to me to be the Attorney-in-Fact of the Maryland Casualty Company, the corporation described in and that executed the within instrument, and also known to me to be the person who executed it on behalf of the corporation therein named, and he acknowledged to me that such corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my Official Seal at my Office in the City

and County of San Francisco the day and year in this Certificate first above written.

/s/ A. McCLINTOCK,
Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires January 12th, 1953.

[Endorsed]: Filed July 13, 1951.

[Title of District Court and Cause.]

ORDER EXTENDING TIME WITHIN WHICH
TO DOCKET APOSTLES ON APPEAL

Good Cause appearing therefor and it appearing that no prior requests for extension of time have been made or granted, it is hereby ordered that the time for docketing libelant's apostles on appeal in the within matter may be extended for a period of 30 days from the 15th day of August, 1951.

/s/ EDWARD P. MURPHY,
Judge of the United States
District Court.

[Endorsed]: Filed August 15, 1951.

In the District Court of the United States for the
Northern District of California, Southern Division

No. 25546 (Admiralty)

EDMUND E. SUNDWALL,

Libellant,

vs.

PACIFIC FAR EAST STEAMSHIP CO., FIRST
DOE and SECOND DOE,

Respondents.

REPORTER'S TRANSCRIPT
ON APPEAL

Before Hon. Edward P. Murphy, Judge.

Appearances:

BELLI, ASHE & PINNEY, by
VAN H. PINNEY, ESQ.,

Proctors for the Libellant.

DORR, COOPER & HAYES, by
JAY T. COOPER, ESQ.,

Proctors for the Respondent.

Wednesday, February 14, 1951

The Clerk: Sundwall versus Pacific Far East
Lines, for trial.

Mr. Pinney: That is ready.

Mr. Cooper: Ready, if the Court please.

Mr. Pinney: Does your Honor wish to look at

the pleadings or shall I make an opening statement?

The Court: I am familiar with the pleadings.

Mr. Pinney: If your Honor is familiar with the pleadings, I don't think it is necessary to make an opening statement, because I think the facts are adequately set forth in the pleadings before your Honor.

Mr. Cooper: I would like to make a brief statement, if agreeable to the Court.

The Court: Very well.

Mr. Cooper: If the Court please, I might say, as the pleadings show, this is an eye case which happened on board a ship, and we believe that the preponderance of the evidence will not show that the eye condition is due to anything that occurred on board the ship, and we anticipate that the preponderance of the evidence will not show that this vessel was unseaworthy.

As your Honor knows, there are two allegations, two causes of action in the complaint, one of negligence, and one [2*] of unseaworthiness. For the purposes of this case, I submit that they are substantially the same.

I am going to state enough of the facts so your Honor will be able to follow the testimony which is not indicated in the pleadings; that is, as they were pouring a paint compound out of a fifty-gallon drum which had two holes in the top side of it—two plugs, I should say—one to let the air in so that the paint can go out, and the bottom one to

* Page numbering appearing at top of page of original Reporter's Transcript of Record.

permit the contents to run out. These two seamen—two or three, I have forgotten which—according to the story of the libellant, were just simply pouring this out into this bucket, and it happened, according to the libellant's story, to slop up, and a few drops got in his eye.

It is our position, your Honor, that is a very simple operation; I mean it is a thing you would normally do on board a ship. It is as common as can be, and that method of getting paint out of a fifty-gallon drum into a bucket is nothing that is dangerous; it is something, as I say, that is commonly done, and it doesn't render the vessel unseaworthy because they didn't happen to have a pump. We do not believe that vessels generally have pumps to perform that operation. We think it is one of those cases which your Honor knows that it is a very common chore, that if the jury finds something is a pure accident there is no liability. We honestly think, your Honor, that this thing that caused the eye condition can be charged to just a pure [3] accident. It was a simple operation——

The Court: Let the facts be developed. I think you are arguing the case, Mr. Cooper.

Mr. Cooper. Perhaps I am, your Honor.

The Court: Proceed.

Mr. Pinney: Mr. Sundwall.

EDMUND E. SUNDWALL

the Libellant, called as a witness in his own behalf, being first duly sworn, testified as follows:

The Clerk: Would you state your name to the Court for the record, please?

A. Edmund E. Sundwall.

Direct Examination

By Mr. Pinney:

Q. Mr. Sundwall, where do you reside at the present time? Where do you live?

A. Well, the last year I have been in the Marine Hospital; otherwise I used to live at 25 Clay Street, the Albion Hotel.

Q. Can I ask you to talk just a little bit slower?

A. Oh, I see.

Q. What is your occupation? What do you do for a living? A. I am a seaman.

Q. How long have you been going to sea for a living?

A. Well, I started when I was a kid in 1911.

Q. In 1911? [4] A. Yes, sir.

Q. How old were you then?

A. I was close to eighteen.

Q. How old are you at the present time, Mr. Sundwall?

A. I am fifty-seven, the 5th of September.

Q. Have you ever done anything else for a living other than following the sea?

A. Very, very little. In 1912 I was shoveling coal; that is about all.

(Testimony of Edmund E. Sundwall.)

Q. Aside from that time in 1912 shoveling coal did you do anything other than following the sea for a living?

A. Maybe a week or fourteen days I was cutting ice up in Pennsylvania, it was slow shipping; otherwise I never worked ashore.

Q. In following the sea for a living what kind of ships have you sailed on? Have you sailed on both steam and sail?

A. Yes, sir, including light ships.

Mr. Cooper: What was that?

The Court: "——including light ships."

Q. (By Mr. Pinney): What have you sailed on principally, steam or sail?

A. Mostly steamers.

Q. You were injured in an accident on the 28th day of April, 1949? A. Yes, sir. [5]

Q. What ship—were you aboard ship at that time? A. Iran Victory.

Q. The Iran Victory. What rate did you have aboard that ship?

A. I was an able-bodied seaman.

Q. You were an a.b. Have you ever shipped as anything other than an a.b.?

A. Last year I sailed as boatswain.

Q. You sailed as boatswain? A. Yes, sir.

Q. How many voyages have you sailed as a boatswain?

A. I don't know exactly. I was a boatswain on the Iran Victory for seven months, and the ship before, the Ampac Los Angeles, I was there about

(Testimony of Edmund E. Sundwall.)

fifteen months, and before that I was—war-time I was on different ships eight or nine months in the South Pacific.

Q. When did you ship aboard the Iran Victory?

A. I beg your pardon?

Q. When did you sign articles aboard the Iran Victory? A. I believe the 8th of April.

Q. The 8th of April; that would be in 1949?

A. Yes, sir.

Q. When did the ship sail, do you know?

A. I think about two or three days after; we went down to Long Beach and loaded, and then back to San Francisco.

Q. When you shipped aboard the Iran Victory were you given any [6] kind of a physical examination by the ship's doctor?

A. I don't remember; I suppose we had—we mostly have, when we ship on these ships you always pass a physical examination on most of the ships.

Q. Most ships have physical examinations?

A. Yes, sir.

Q. Have you had occasions within the year preceding the date you shipped on the Iran Victory to take physical examinations?

A. Oh, yes, sir.

Q. Did you ever have any trouble with your eyes before you shipped on the Iran Victory?

A. No; I had a little accident years ago, in 1933, when I was a boatswain shipping on the West Iris,

(Testimony of Edmund E. Sundwall.)

but it don't amount to anything; I just got a little rust in it.

Q. You got some rust in your eyes?

A. Yes.

Q. That was in 1933? A. Yes.

Q. Did you *ever any* other injury to them?

A. No, not that I know of. Oh, yes, there was some time ago they claim I got a piece of wood in my head during the war, but the doctors believed that it caused the cataracts in my right eye.

Q. Is it correct to state that when you went aboard the Iran Victory you had some trouble in your right eye? [7]

A. Well, yes, just about two or three months before that, there was an Army doctor told me that I had something the matter with my eye and I should go up to the doctor about it. So the next day I went to the Marine Hospital, and I believe that was in the early part of January—maybe the latter part of December in 1948, or '49, and they told me to come back in six or seven months.

Q. Did you have any difficulty seeing out of your right eye when you shipped aboard the Iran Victory?

A. As a matter of fact I never noticed anything; it might be if they tried me out.

Q. You weren't conscious of any difficulty in seeing out of your right eye? A. No.

Q. How about your left eye when you boarded the Iran Victory, could you see out of that left eye?

A. So far as I know, they were perfect.

(Testimony of Edmund E. Sundwall.)

Q. Did you hurt your left eye aboard the Iran Victory? A. Not exactly. I got oil in it.

Q. You got oil in it. When did that happen, what day, do you remember?

A. Yes, sir, the 28th of April, 1949.

Q. About what time of the day did it happen?

A. Well, we started to work at eight o'clock. I should imagine it was, oh, between 8:15 and 5:45, maybe. [8]

Q. What watch were you standing that morning?

A. I was standing eight to twelve watch, sir.

Q. When the boatswain broke out on the eight to twelve watch that day did he give you any specific instructions as to what you should do?

A. Yes, sir, he told me and another fellow to go and paint around the boat, to paint what they call the fidley.

Q. To paint the fidley?

A. Yes; he is going to send another man up there. There is a fifty-four-gallon drum lashed onto the port side against the railing; release that lashing and take five gallons out of that drum.

Q. Do you know the names of the other man or the other men whom the boatswain assigned to help you with this job?

A. Well, one man what I remember came up to see me in the hospital; his name was Bowles; he was a Dane, and then there was my watch partner, that other fellow, but I don't recollect his name.

Q. Somebody named Bowles and another man whose name you do not presently recollect were

(Testimony of Edmund E. Sundwall.)

assigned to work with you on this by the boatswain, is that right? A. Yes, sir.

Q. He told you to get the oil into what?

A. A five-gallon bucket.

Q. Into a five-gallon bucket. What was the oil kept in that [9] you were to get into this five-gallon bucket? A. I beg your pardon?

Q. What was the oil in before you emptied it into the five-gallon bucket?

Mr. Cooper: I think he said paint, counsel; it doesn't make any difference.

Q. (By Mr. Pinney): All right; will you kindly describe what you emptied into the five-gallon bucket? A. Emptied the oil from the barrel.

Q. Oil from a barrel? A. Yes, sir.

Q. Will you tell me about the barrel from which you emptied the oil? How big a barrel was it, do you know?

A. It was about four feet, I suppose, fifty-four gallons.

Q. Fifty-four-gallon drum, was it?

A. Yes.

Q. And where was that fifty-four-gallon barrel kept aboard the ship?

A. It was lashed with other two of the same kind on the port side up on the top of the poop deck.

Q. It was lashed with two others on the port side of the poop deck?

A. Yes, up against the rail.

Q. And when you went up there to empty it, did you immediately empty the oil from the barrel

(Testimony of Edmund E. Sundwall.)

into the bucket, or did you do [10] something else?

A. No; we got the order to release the lashing, so I looked—like that we should have a pump; we don't need to take the lashing off the barrel, the barrel can be lashed all the time, just use the pump. They don't had no pump, so we took the lashing off and I held onto the bucket.

Q. Did you ask anybody for a pump?

A. Yes, sir.

Q. Who did you ask for a pump?

A. I asked the boatswain for a pump and he made the statement they don't have no pump on the ship.

Q. You have been going to sea ever since 1911, have you? A. Yes, sir.

Q. Do you know what the custom is relating to removing oil from a fifty-four-gallon barrel on board ship?

A. The way I always done it and always seed it done, either to have a pump or else with a barrel high enough where you can get a bucket underneath and have a spigot.

Q. I believe you said you asked somebody for a pump? A. Yes, sir.

Q. And you were told that there wasn't any pump, is that correct? A. That is correct, sir.

Q. After the boatswain told you that there wasn't any pump did he tell you how to go about getting the oil out of the barrel? [11]

A. That was the only way, I suppose, to take

(Testimony of Edmund E. Sundwall.)

the top and the air top out there and the cap off and release the lashing and then pour out that way.

Q. Was there any spigot provided for you to use in getting the oil out of the barrel?

A. No, sir, they just told us to go ahead the way it was, release the lashing on the barrel and pour it in a bucket that way.

Q. Somebody told you to do it that way?

A. The boatswain told us to take the lashing off and get the five gallons of paint or oil out of there.

Q. Have you ever worked upon any ship where they didn't provide you with either a pump or a spigot?

A. No, sir.

Q. To take oil out of a barrel?

A. No, sir.

Q. Never in the years you have been to sea?

A. No, sir.

Q. How did you get the oil out of the barrel on this occasion?

A. Well, we took the cap off; the two fellows knocked the cap off or turned it so it could turn around, and pulled the barrel over, and I held the bucket.

Q. Who pulled the barrel over?

A. Them other two men, Bowles and——

Q. What did you do? [12]

A. I held the bucket, sir.

Q. With you holding the bucket and the other two men pulling on the barrel will you tell us what happened?

A. Well, when we had about three—maybe three and a half feet of oil in that bucket, then all of a

(Testimony of Edmund E. Sundwall.)

sudden, if they released the air hole or if the ship rolled, I can't tell you anything, that that oil splashed up and came in my face.

Q. You don't know what happened that made the oil come in your face, is that correct?

A. No, because I were watching the bucket so I don't get anything on the deck.

Q. How much oil came up in your face, do you know? A. Oh, quite a lot.

Q. Did it cover your face?

A. Well, pretty well, good on one side, the way I was standing, the left side against the barrel.

Q. Did any of the oil get in your eye?

A. Positively.

Q. What eye? A. My left eye.

Q. What did you do then?

A. Well, after we got the oil in the bucket, I took the oil to the boat deck and I took and I put it down, and my eye started getting sore, burning. I went down to the washroom and put some water in my eyes and on my face later, and I went back and I [13] started to faint. I never thought that during the time that anything should happen; I thought that it was——

Q. You washed your eye and went back to work; is that what you did? A. Yes.

Q. And did you go to the purser or anybody else for any medical assistance?

A. I finished the work, me and Bowles, then I went to the purser.

Q. When did you go see the purser?

(Testimony of Edmund E. Sundwall.)

A. Yes, sir.

Q. When?

A. Well, it was just—that work only took, I imagine, about an hour or so to paint around the fidley, and I went to the purser then because my eye started to burn, and he gave me an eyeglass to wash my eye out, and the first time I washed my eye out—there was a wash basin there, so I applied to whatever it was—whatever it was I don't know. And he says, "You shouldn't do that. I should like to see that." So he took the glass and he says, "There is a lot of oil in that eye cup." I said, "That's all right."

Q. He said, "There is oil in the eye cup" anyhow, on what date?

A. Yes, that was the first day.

Q. That was on the day of the accident?

A. Yes, sir. [14]

Q. And that was about an hour after the accident, you said?

A. I imagine something like that.

Q. By the way, let me ask you one more question about this barrel. Do you know whether or not the barrel was full before you started pouring the oil?

A. Yes, sir, the barrel was full because there was seal on it. We had to break the seal before we can release the top.

Q. Did you ever see the purser again about your eye after that first occasion that you told us about?

A. Yes, mostly—mostly every day, once every

(Testimony of Edmund E. Sundwall.)

day, but mostly before I went to the wheel or when I came from the wheel. So he gave me some salve and some drops, and he told me the drops was a little too strong for my eyes.

Q. Did you continue to put the salve on your eyes that he gave you?

A. Yes, he gave me a tube.

Q. Did you put the drops in your eye?

A. He put the drops a few times and he told me that the eye drops he had was too strong for my eye.

Q. Did your eye continue to bother you while you were working aboard the ship?

A. Yes, sir, it got worser.

Q. It got worse? A. Yes.

Q. Where was the ship bound? [15]

A. She was bound for Okinawa.

Q. Did you continue to work aboard the ship until you reached Okinawa?

A. Yes, but the last day I can't take the wheel because I can't see the compass.

Q. The last day you couldn't see the compass? Is that right?

A. Yes, sir, so somebody took the wheel and I were working on deck.

Q. When did you first become aware of the fact that you were having trouble seeing out of your left eye?

A. Well, as a matter of fact, it seems like it started about two or three days after, it started to get foggy, hazy.

(Testimony of Edmund E. Sundwall.)

Q. By two or three days, you mean two or three days after you splashed this oil in your eye?

A. They were very inflamed and sore during this time, but I don't know—

Q. It started to fog and then did it gradually get more foggy every day?

A. I beg your pardon?

Q. Did it gradually get more foggy every day?

A. Yes.

Q. Until finally you reached the point where you couldn't see the compass?

A. Yes; and the day they took me to the doctor it was very bad, I couldn't hardly see [16] anything.

Q. Now I think you testified—let me ask you again—when you got this oil in your eye, did it burn at all? A. Yes, sir.

Q. How long did this paining sensation of your eye continue?

A. Well, I had a sore eye there for a long, long, long time.

Q. Did it continue to burn up until the time you saw the doctor or did the burning leave?

A. No.

Mr. Cooper: I am going to object to that as leading.

The Court: Sustained upon that ground.

A. It was still sore during the time I was in the hospital in Okinawa.

Q. (By Mr. Pinney): You said something about a hospital in Okinawa? A. Yes, sir.

(Testimony of Edmund E. Sundwall.)

Q. Did you go to a hospital in Okinawa?

A. They took me to the dispensary—they drove me to the dispensary, and the Army doctor looked at my eye and he said, “You should be in the hospital,” and they took me to the hospital in an ambulance.

Q. Do you know what day you were taken to the dispensary and to the hospital at Okinawa?

A. It seems to me the 10th or 11th. We arrived the 10th, I believe, and it was the 11th early in the morning, about half past eight in the morning. [17]

Q. That would be the 10th or 11th of May, would it, in 1949? A. Yes.

Q. Did they do anything for you at the dispensary? Did they give you any treatment for your eye or not?

A. No, sir. He said, “We will take you right away to the hospital.”

Q. Do you know what hospital you went to in Okinawa?

A. It was an Army hospital; that is all I can say, sir.

Q. What treatment did they give you at the Army hospital in Okinawa?

A. They washed my eye out and gave me some drops and some salve and bandaged me up, and they put me to bed.

Q. Did they give you drops more than once?

A. Every morning somebody took me—they have an Army dispensary across the street from the hos-

(Testimony of Edmund E. Sundwall.)

pital barracks there, so they always provided me a cab to take me over there every morning so they treated my eyes and they brought me back to the hospital.

Q. How long did you remain in the hospital in Okinawa? A. To the 14th of June.

Q. What happened on the 14th of June?

A. About the 10th of June a doctor came from Manila, and he told the other doctor, "The only thing I can do with that fellow is to send him back to the States as fast as possible, because his eye is pretty bad." So the 14th of June they fly me to Guam. [18]

Q. Did you go into a hospital in Guam?

A. Yes, sir.

Q. How long did you remain in the hospital in Guam? A. Two days.

Q. Where did you go from Guam?

A. Took an airplane from Guam to Honolulu.

Q. Do you know when you got to Honolulu?

A. Well, it was the next day, next evening or night, about seven or eight or nine o'clock at night the next day.

Q. That would be about the 16th or 17th of June; something like that?

A. Yes. No, it must be before that, because we left there about two o'clock in the evening, and we got back to Honolulu about eight—seven or eight o'clock at night.

Q. To what hospital did you go in Honolulu?

(Testimony of Edmund E. Sundwall.)

A. I think they call it the Trickler Hospital; something similar, a new Army hospital.

Q. An Army hospital in Honolulu?

A. Yes.

Q. How long did you remain there?

A. I were there ten days.

Q. Where did you go from there?

A. From there they fly me back to Fairfield, and the ambulance took me to the Marine Hospital.

Q. In the various hospitals you were in from the time you left [19] Okinawa did they do anything for you other than change the dressings and put drops in your eyes?

A. No, that's all they did, just the dressings.

Q. When you reached the Marine Hospital, that was approximately when?

A. That was the 24th of June.

Q. 24th of June, 1949? A. Yes, sir.

Q. What treatment did they give you when you reached the Marine Hospital in San Francisco?

A. I arrived about five o'clock in the evening. They took me right into that eye doctor and he washed it out and treated and cleaned it out, because he asked me how long it had been since that had been washed out. I told him three days, but they put clean bandages on, but he started to treat me right away that night. His name is Doctor Faith.

Q. Were any operations performed on your eyes in the Marine Hospital in San Francisco?

A. During the time I were laying in the hospital

(Testimony of Edmund E. Sundwall.)

in San Francisco here they told me that my cataract was pretty bad and they could remove it. So they removed it the 24th of July.

Q. The 24th of July they removed a cataract; that was in which eye, Mr. Sundwall?

A. The right, sir.

Q. That was the right eye? [20]

A. Yes, sir.

Q. That wasn't the one that was hurt in this accident?

A. I beg your pardon?

Q. That wasn't the eye you got the oil in?

A. No, sir.

Q. What did they do for your left eye?

A. Well, they treated it for a long time, and I was in the hospital from the 24th of June to about the 24th of October. They told me if I want to stay in the hospital to transplant the cornea I can stay, but if I am not willing, to get out of the hospital. I can see a little, so I went outside.

Q. You left the hospital the 24th of October?

A. Yes, sir.

Q. Of 1949?

A. Yes, sir.

Q. And did you go back to the Marine Hospital later on?

A. Yes, sir. I was up every tenth or fourteenth day; sometimes they telephone me to come up there.

Q. You didn't go to sea during this time?

A. Oh, no.

Q. Did you go back in the hospital as a patient?

A. I got a telephone call the 7th of February to come up to the hospital right away because the

(Testimony of Edmund E. Sundwall.)

8th of February, next day, they going to transplant the cornea.

Q. That would be the 8th of February, 1950, is that right? [21] A. Yes.

Q. On that day did they perform an operation on your eye? A. Yes.

Q. And that was on which eye?

A. My left eye, sir.

Q. On the left eye. Did you continue to remain in the hospital after that operation?

A. I have been there since.

The Court: You have been there ever since?

A. Yes, sir.

Q. (By Mr. Pinney): You are still a patient at that hospital? A. Yes.

Q. After the 8th of February when they performed the operation on your left eye, could you see better out of the left eye then after the operation?

A. Yes, I could see—it seems to me I could see then about, say about three weeks, I came—after I was in that bed about nineteen days, then I could sit around in the hospital, so they used to send me over to the University of California Hospital for some kind of radium treatment, so I was able to take the automobile that they gave me and get along pretty good over there and then come back again to the hospital. I went five or six trips all told.

Q. After this operation on February 8th, did they perform any other operations on your left [22] eye?

(Testimony of Edmund E. Sundwall.)

A. Yes, and then about—just after that it started to cloud up very, very bad.

Q. It started to cloud up after this operation, you mean?

A. Yes, so Doctor Hogan would come over, and he told me, “In another week we will send you over to the University of California; we going to check on your eye to see if we can transplant another cornea—” which they did September 15th.

Q. On the 15th of September they performed a second operation on the left eye? A. Yes, sir.

Q. Following that second operation, after a while could you see better out of your left eye?

A. Yes, for a little short while, because—I don’t understand it, but the doctor told me—he never mentioned it, but he said there is something the matter with it, so we have to operate another three weeks.

Q. All right.

A. So on the 6th of October they—I found out afterwards iris was stopped; they released the iris October 6th.

Q. The 6th of October they performed some kind of an operation on the iris? A. Yes, sir.

Mr. Cooper: Is that for the same eye?

Q. (By Mr. Pinney): All these were on the same eye, the 8th of October, the 15th of September and the 6th of October were all [23] to the left eye, were they?

The Court: Do you understand the question?

Q. (By Mr. Pinney): Were all of these three

(Testimony of Edmund E. Sundwall.)

operations—Mr. Sundwall, the operation on the 18th of February was on what eye?

A. On my left eye.

Q. The 15th of September that operation was to what eye? A. My left eye.

Q. The 6th of October was to which eye?

A. On my left eye, sir.

Q. On the left? A. Yes, sir.

Q. Can you see out of the left eye at the present time?

A. I just can make out lights, that's all, but I can't make out faces or anything. I depend on my right eye at the present time.

Q. Can you see me now from where you are sitting on the witness stand?

A. I can see there is something just moving; I can't see no faces.

Q. You can't recognize me? A. No, sir.

Mr. Pinney: I have no further questions.

Cross-Examination

By Mr. Cooper:

Q. Mr. Sundwall, you are a single man, are [24] you? A. Yes, sir.

Q. You told us that you were an a.b. on the Steamship Iran Victory. A. Yes, sir.

Q. You also told us that you had served on some other vessels. A. Yes, sir.

Q. Or at least on other occasions as a boatswain?

A. Yes, sir.

(Testimony of Edmund E. Sundwall.)

Q. How did it happen that you were an a.b. on the Iran Victory?

Mr. Pinney: Your Honor, I will object to that as incompetent, irrelevant, and immaterial.

The Court: What is the purpose of that?

Mr. Cooper: I think it has a bearing. I believe his right eye, as a matter of fact, was affected when he signed on the Iran Victory at that time.

A. Well, the reason I shipped on board the Iran Victory——

The Court: Wait a moment. Do you mean to say that you are going to develop the fact that he shipped as an able bodied seaman——

Mr. Cooper: Yes, your Honor.

The Court: ——and took a reduction in rank because of failure of vision in his right eye?

Mr. Cooper: I think he might well have decided to work as an a.b. rather than——

The Court: He admits he had difficulty in his right eye [25] before he signed on?

Mr. Cooper: I didn't understand that.

The Court: Is that correct, Mr. Pinney?

Mr. Pinney: That is correct.

The Court: There doesn't seem to be any question about that.

Mr. Cooper: I didn't catch the testimony then. I had difficulty understanding him.

Q. Then you had difficulty with your right eye when you signed on the Iran Victory, is that right?

A. Yes, I guess I had a little.

Q. As a matter of fact, your vision in your right

(Testimony of Edmund E. Sundwall.)

eye had practically disappeared, had it not, at that time?

A. Well, I don't know; after the operation Doctor Schafer told me that they had to remove two lenses of that eye and eye wouldn't be very good, but I will see something out of it if I used strong glasses.

Mr. Cooper: Will you read that, Mr. Reporter.

(The reporter read the answer.)

Q. (By Mr. Cooper): What operation are you talking about—before you signed on the Iran Victory or afterwards?

A. Oh, no, it was after. I don't had no operation before I signed on the Iran Victory; all that operation happened after I got hurt on the Iran Victory.

Q. The operation you are talking about is after you were [26] injured on board the Iran Victory?

A. Yes, sir.

Q. Had you had your eye examined before you went on the Iran Victory by the Marine Hospital doctors?

A. I imagine we had. They always examine us before we ship and sign the articles anyhow; that is very common; I never did pay attention particularly.

Q. Mr. Sundwall, the fact is they don't give you an eye examination.

A. Sometimes they do, yes.

Q. They don't unless there is something special called to their attention about your eye, do they?

A. Where men ship out of different ports, if they ship in Baltimore or New York, they have different customs. They call it—

(Testimony of Edmund E. Sundwall.)

Q. How long have you been shipping out of San Francisco?

A. I arrived in San Francisco in 1922. Mostly all the time I have been except in 1946 I were running for the Marshall Plan ships, we ran out of Canada.

Q. In other words, you have been shipping out of Pacific Coast ports for a great many years?

A. Yes, sir.

Q. As a matter of fact they give you what is commonly called a very routine examination, they don't customarily examine your eyes, do they, when you ship on on board ship? [27]

A. It depends on the companies.

Q. I think you have told us that you don't recall what examination was made before you signed on the Iran Victory; is that correct?

A. Well, I can't remember that; I passed so many examinations I can't exactly say yes or no to that. They might pass an eye examination.

Q. You are telling us then that you might have passed an eye examination; is that what you told us?

A. Well, if they examined eyes I don't remember that, because you have to pass some physical examination, see, and so forth, before you sign on your ship.

Q. How long does it take in your experience to pass a physical examination for each man?

A. Oh, sometimes it takes ten minutes, fifteen minutes.

(Testimony of Edmund E. Sundwall.)

Q. How many were there on the ship, the Iran Victory?

A. Iran Victory, I imagine about forty-two; maybe forty-five.

Q. Mr. Sundwall, what was the ship that you were on preceding the Iran Victory, can you tell us?

A. No, sir.

Q. Didn't you tell us when I took your deposition about a year ago in our office that you had been on the Ampac Los Angeles, which is operated by the American Pacific Company, Steamship Company?

A. Yes, that's right, sir. [28]

Q. It is a fact, isn't it, you left that vessel on the 16th day of—— A. September, I think.

Q. September of 1948? A. Yes.

Q. And then you didn't sign on the Iran Victory until the 8th day of April of 1949?

A. That's right.

Q. What did you do in the meantime?

A. During the meantime was the strike in San Francisco, and I can't ship, they had the pickets around the docks, there was nobody could ship out, and just after the strike was settled there were so many men ashore it takes a long time, and the shipping cards ran out. When my card got pretty close, they always ran out.

Q. Where were you located during that time, during the ship strike?

A. I was living at 25 Clay Street.

Q. You were living at 45 Clay Street?

A. 25 Clay Street.

Q. So you didn't—I think I asked you the ques-

(Testimony of Edmund E. Sundwall.)

tion a while ago about where you were examined. You say you were examined on the ship. Did you go to any marine hospital during that period?

A. Yes, as I told, when there was a fellow told me there was [29] something wrong with my right eye, the very next day I went up to the Marine Hospital.

Q. Somebody told you there was something wrong with your right eye. Who told you that?

A. I was sitting in a restaurant or a saloon having a glass of beer or a cup of coffee, whatever it was. He was an Army captain and he introduced himself, I can't remember his name. He told me, "If I was you I should see about my right eye" because there is something in my eye. So the very next day I took his advice and I went up to the Marine Hospital and saw Doctor Schafer and Doctor Rigsby, and he told me he can't do anything on them now, I have to wait another half year, so during that time I shipped.

Q. Didn't you yourself recognize any trouble with your right eye? A. No, I never did.

Q. I take it there was some spot on it, was there, at that time? A. Yes, that is what he claimed.

Q. Am I correct in saying that at one time that you weren't conscious of any trouble with your right eye when you were on the Iran Victory?

A. No.

Q. You were conscious of trouble with your right eye, is that right? [30]

A. Yes, according to that doctor, but it didn't bother me or anything else.

(Testimony of Edmund E. Sundwall.)

Q. You mean it didn't hurt you?

A. No, sir.

Q. It didn't pain you? A. No, sir.

Q. You couldn't see through your right eye, could you?

A. Well, I guess when I started to realize——

Q. Go ahead, Mr. Sundwall. The reporter is just trying to get what you said.

A. Well, after I went to the doctor, I guess I started to realize that that eye was bad, but before that——

Q. You mean the United States Marine Hospital doctor? A. Yes, sir. Before that——

Q. You nevertheless signed on board the Iran Victory with that eye? A. I beg your pardon?

Q. You still signed on board the Iran Victory?

A. Yes, because they told they can't do anything with that eye for about another half year or so.

Q. Did they tell you you had a cataract on it?

A. I suppose that is what it was, I suppose, at the start; I don't know.

Q. In regard to the left eye, Mr. Sundwall, you told us that you got a piece of rust in it. What year was that? [31]

A. That was 1933. I were boatswain on the McCormick Ship West Iris.

Q. As a matter of fact, you had inflammation of that eye after that from time to time, did you not?

A. No.

Q. Didn't you tell the United States Marine Hospital that—— A. No, I didn't know.

(Testimony of Edmund E. Sundwall.)

Q. Didn't you tell the United States Marine Hospital that you had had inflammation in that eye from time to time?

The Court: By "that eye" do you mean the left eye?

Mr. Cooper: The left eye.

A. It may be inflamed once in a while like a lot of other things; otherwise I don't know that it ever bothered me anything like that, sir, that eye.

Mr. Cooper: If the Court please, the hospital records are here. I assume they were subpoenaed for production.

The Clerk: They were up here at the beginning of recess.

Mr. Pinney: We haven't received them.

Mr. Cooper: Mr. Pinney and I saw Doctor Head yesterday and he said they would be here this morning. Pending their arrival here, I have a copy of the clinical record signed Doctor Harold T. Castburg, who was the senior surgeon and deputy medical officer in charge. Pending their arrival may I refer to it?

Mr. Pinney: I assume this is a true copy of that record. No objection to the use of it. [32]

The Court: Very well. You may use the copy.

Mr. Cooper: May I have it marked for identification Respondent's Exhibit A.

(The abstract of clinical record referred to was marked Respondent's Exhibit A for identification.)

(Testimony of Edmund E. Sundwall.)

Q. (By Mr. Cooper): Mr. Sundwall——

A. Yes, sir.

Q. One of the first things that they do, and did in this case, when you went to the hospital, is to ask you to tell them about the history of the eye, is that right?

A. When I came to the Marine Hospital?

Q. Yes. A. Yes, I suppose they did.

Q. And you told them, you gave them a history at that time, did you not?

A. Yes, sure, I gave them the history.

Q. Did you not tell them at that time that some rust lodged in your left eye, followed by occasional episodes of inflammation since that time?

A. No; I told them. I says it may be red once in a while but I never have no—I have no trouble with that eye, and that happened in 1933.

Q. Mr. Sundwall—— A. Yes, sir.

Q. Were you conscious of any difficulty with seeing through your [33] left eye while you were on the Iran Victory? A. No.

Q. And before this mishap occurred with the oil, as you called it? A. No, sir.

Q. You were not? A. No, sir.

Q. You were acting as a.b. Now, Mr. Sundwall, a boatswain tells you the job to do, and you being an a.b., you go ahead and do it, is that right?

A. That is right.

Q. He doesn't come there and show you how to do it? A. He tells you how to do it, yes.

Q. You mean to say he tells you exactly how to

(Testimony of Edmund E. Sundwall.)

tip the barrel over or the drum over and get some paint or oil in the bucket? A. Yes, sir.

Q. You mean he gave you detailed instructions how to do it?

A. Sure, he told us to raise the barrel, we don't have no pump there, which is the only way you can get oil out of the barrel.

Q. What is that again?

A. That is the only way you can get oil out of a barrel if you don't have no spigot or pump.

Q. He didn't have to tell you how to do it, did he? A. Oh, sure. [34]

Q. You mean to say he told you to go up and tip that barrel and let it run out?

A. He was there when we took the lashing off the barrel.

Q. He wasn't present when it happened?

A. No, he wasn't but he was there when we took the lashing off.

Q. You said you got the bucket? A. Yes.

Q. Where did you get the bucket?

A. I got it in the paint locker, I imagine. I don't know if the boatswain handed me the bucket or I got it from the paint locker. I don't pay attention to things like that.

Q. So you have told us now that you remember the other men tipped the drum over?

A. Yes, sir.

Q. And you had gotten the bucket?

A. That is right.

Q. And you told us there was about three and

(Testimony of Edmund E. Sundwall.)

half feet of oil, as you called it,— A. Yes.

Q. When this thing splashed up in your face?

A. That is right.

Q. Was the bucket sitting down on the deck at that time?

A. No, I was holding the bucket and grabbing it so it don't come on the— [35]

Q. You were holding on the bucket?

A. Yes.

Q. You were holding on the bucket by the bail? Do you know what a bail is?

A. Yes, it is the same as like a bucket.

Mr. Pinney: If your Honor please, may I interrupt just a second. The young lady is here from the Marine Hospital with the hospital record, and I have in Court Doctor Bricca who has made an examination of Mr. Sundwall and will testify. I would like to have him have the opportunity to look at these records briefly before testifying so that he can have a more complete picture. At this time may we introduce the records so the Doctor may look at them?

The Court: Any objection?

Mr. Cooper: I have no objection.

The Court: All right; step down. You'd better help him down.

Mr. Pinney: Miss Boe, of the Marine Hospital, will you take the stand? [36]

EDMUND E. SUNDWALL

recalled, and having been previously sworn, testified as follows:

Cross-Examination

(Resumed).

Mr. Cooper: In the interest of time, I consent to the Doctor looking at the records, if the Court please.

By Mr. Cooper:

Q. Mr. Sundwall—— [38] A. Yes, sir.

Q. This bucket that you have told us about, the five gallon bucket which you got to get the paint or oil in, how deep is that bucket from the top of the bucket itself down to the bottom of it?

A. How deep? I imagine it is about—let's see—four feet, five feet—four feet, I guess. No, I don't know; about two and a half feet. A common bucket. I never measured it; I don't know.

Q. You think now about two and one-half feet?

A. No. Well, a common bucket; I don't know.

Q. It isn't a common market bucket; it is a bucket that commonly has paint in it?

A. It wasn't a common paint bucket; but they have five gallon cans; it was just a common bucket. It wasn't a paint bucket. It was just an old bucket what they been using in painting; it was no good for that purpose anymore. That was the kind of bucket it was.

Q. It was a bucket you had been using to mix paint in; is that what you said?

(Testimony of Edmund E. Sundwall.)

A. No. I don't know what they had been using it for; just a common bucket, just like somebody have scrubbing the floor and things like that. That is what kind it was.

Q. It held five gallon?

A. About five gallons. [39]

Q. You said about two and a half feet?

The Court: He said three and a half feet, full of oil or paint.

Q. That had a bail or handle on it, I believe you call it? A. Yes.

Q. That had a bail on it? A. Yes.

Q. Did you have hold of the handle or the bail?

A. I had hold of the handle and——

Q. You were standing there——

Mr. Pinney: Let him finish his answer.

Mr. Cooper: All right. What were you going to say?

A. I were holding the handle to the bail because I had to move the bucket so I don't get any paint on the deck.

Q. You said you had hold of the handle.

A. To the bail.

Q. To the what? A. To the bucket.

Q. To the bucket?

A. I had a handle and then a hand underneath to move it when the oil came out of the barrel so it don't come on the deck.

Q. Weren't you just standing there holding on the bail of that bucket, you know the thing that comes up over the top—weren't you just standing there holding onto it?

(Testimony of Edmund E. Sundwall.)

A. No, I had to move the bucket, because the ship was moving a [40] little, and things like that.

Q. You were telling us that you had hold of the bail with one hand and had the other hand under the bottom of the bucket.

A. Yes, holding the handle to the bucket with one hand and I held the bail with the other—the bail or the bucket—we called it bucket.

Q. You call it——

A. I don't know what you call bail.

Q. You said the bail or bucket; is that what you just now said?

A. I don't know; but I thought it was—they call it a bucket on the ship.

Q. That is what I call it. I don't know whether you were saying bail or pail.

A. We call it——

Q. The bail is the handle on the bucket.

A. This is a bucket——

The Court: Let's not quibble about these trifles. We all know he was holding some kind of bucket.

Mr. Cooper: I couldn't tell just what he meant by his testimony, your Honor. That is the reason I was trying to find out.

Q. You were holding it with one hand on the bail or handle and the other hand under the bucket, is that right? A. Yes, sir. [41]

Q. Where was your face in reference to the top of that bucket?

A. I was standing like that with my left side to the bucket like, when all of a sudden there—they

(Testimony of Edmund E. Sundwall.)

were running gently, and then all of a sudden oil came all out at one burst. If they had released the air hole or if the rolling of the ship make it come all in big bursts, then it slopped in my face.

Q. It slopped out of the bucket, is that right?

A. Yes, it did.

Q. Didn't you tell the purser when you reported this injury to him that only a few drops got in your eye?

A. It might be only a few drops in the eye, but I had quite a lot on me.

Q. You tell us you took the bucket and put it some place on the boat deck?

A. That's right.

Q. Did you wait until the bucket got full before you took it there or was the bucket practically full?

A. The bucket was full; it was overrunning.

Q. It was what?

A. The bucket was full already when I left the poop deck.

Q. So you took it up to the poop deck and then you went down and washed your eye?

A. No, I took it up to the boat deck.

Q. And then you went down into the sailors' quarters and washed your eye? [42] A. Yes.

Q. And then you came back on the top again?

A. Yes, sir.

Q. And finished your watch, is that right?

A. I finished that work, then I went to see the purser.

Q. Mr. Sundwall, I took your deposition, did I

(Testimony of Edmund E. Sundwall.)

not, on the 28th day of January in my office—the 28th day of January, 1950, in my office?

Mr. Pinney: We will stipulate that you took his deposition on that date, counsel.

Mr. Cooper: Very well. Counsel, I will refer you to the bottom of page three of that deposition, line twenty-five.

Mr. Pinney: Stipulate that that question was asked and the answer that follows it was given.

Mr. Cooper: I will read the question and answer:

“Q. You didn’t report that injury until the next day, did you?

“A. No. My eye looked all right. I never thought anything of it when I got that trouble in my eye. It started to run a little. I went to the washroom and put some water in my eye, and I believe before that I went to the wheel. I had that, well, burning sensation in my eye, but I didn’t pay much attention to it, and I believe I went and reported to the purser; maybe it wasn’t before the next day, but I believe it was the next day.” [43]

Counsel, may I continue to read?

Mr. Pinney: Yes, continue to read.

Mr. Cooper: (Reading.)

“Q. You think it may have been the next day. Could you be mistaken on that?

“A. Yes.

(Testimony of Edmund E. Sundwall.)

“Q. You know you didn’t go immediately? You know that?”

“A. Yes, I know that because I washed my eye and never thought anything of it that day.”

Is that correct, Mr. Sundwall?

A. No, I think that is incorrect, because the reason why I said that word is that when the purser gave me that eyeglass to wash my eye out there happened to be a wash basin close by, where I had to wash my eye for half a minute or maybe a minute, whatever it was.

Q. You think that was wrong—your testimony is you think that was wrong, is that it?

A. Well, after I emptied that eye wash, the purser told me, he said, “You shouldn’t keep that.” Then he took the glass and he looked, and he says, “* * * a lot of oil in that glass,” and it couldn’t be the next day. I don’t see how I could have that oil next day.

Q. You think because he told you that, according to your testimony, that there was oil in the glass, that it must be right away? [44]

A. I am pretty near certain that it was right away after I finished the painting.

Q. Mr. Sundwall, you gave a story of how it happened, did you, to the purser?

A. Yes, sir.

Q. At that time? A. Yes.

Q. And he wrote down, did he not, in your

(Testimony of Edmund E. Sundwall.)

presence what you had told him? Do you remember that?

A. Well, I suppose I do. The only thing is I tell the way it happen, and I still thought it was the same day; he may be mistaken a day himself, because I am pretty near positive I went up to the purser right away after I finished the work.

Q. As a matter of fact, you didn't go to the purser, did you, Mr. Sundwall, until six days later, that is, which would have been the sixth day of May, 1949?

A. Well, he gave me some eye drops and he told me it was too strong for my eye, and he gave me some salve.

Mr. Pinney: You don't understand the question.

Mr. Cooper: Maybe that is his way of answering, counsel.

The Witness: And he gave me some salve, and he says, "You can treat that eye there," but I believe I went there most every day to the purser, but I still had the salve put in my eye during the time.

Q. (By Mr. Cooper): You used salve? [45]

A. Salve, yes.

Q. Isn't it a fact, Mr. Sundwall, that really there wasn't anything noticeably wrong with your eye until two days later after this and you noticed some mucous in your eye when you got up in the morning?

A. There was pain all the time then, but I never thought anything of it the first couple of days or so, like anything else; I never thought I should be

(Testimony of Edmund E. Sundwall.)

in the hospital over a year and a half over things like that.

Q. As a matter of fact, you continued to do your work, stood your watches, did you?

A. Yes. But as I said before, I believe the purser mistaken, because before I went to the wheel I must have went to the purser, and when I came from the wheel, so I think he greatly mistaken on it.

Q. You think now that you went to the purser when you came from the wheel that day?

A. Yes, because mostly because my eye was tired from looking on the compass.

Q. When you are standing at the wheel it requires that you see the face of the compass, does it not?

A. Yes.

Q. How big is that compass?

A. In diameter about——

Q. About that big (indicating)? [46]

A. I can't say that, no, sir; from there about that size.

Q. It has the points of the compass indicated on it?

A. No, sir, not anymore; they have bare compass; it has just a number.

Q. While you are steering at the wheel you have got to watch to see that you are keeping the vessel on the course, do you not?

A. Yes, sir.

Q. How many times did you stand a wheel watch during the next two days that you continued to do your job?

A. Every third day we are working the four

(Testimony of Edmund E. Sundwall.)

hours and the other two hours you stood it two hours. I working two hours. In other words, like I steered today, tomorrow—no, the next day, I am day man, like I work four hours.

Q. Did you also stand a lookout on the fore-castle head? A. Yes, sir.

Q. How often did you stand lookout?

A. Every night.

Q. And you continued to stand your lookout, did you, for several days? A. No.

Q. Up until about the time you got to Okinawa, did you?

A. No, I couldn't take the wheel last day; I couldn't see good enough then.

The Court: We will take a five-minute recess.

(Recess.) [47]

Mr. Pinney: If your Honor please, the libellant was on the stand under cross-examination. I have a medical expert here, and it is agreeable with Counsel, if your Honor please, at this time to put him on and then resume the cross-examination of the libellant later.

Mr. Cooper: That is agreeable.

The Court: Very well.

Mr. Pinney: Doctor Bricca.

DR. CONSTANTINE R. BRICCA, JR.
called as a witness in behalf of the libellant, being
first duly sworn, testified as follows:

The Clerk: State your name for the record.

A. Constantine R. Bricca, Jr.

Direct Examination

By Mr. Pinney:

Q. You are a physician duly licensed to practice your profession in the State of California?

A. I am.

Q. And in what year were you licensed to practice in this State? A. In June of 1942.

Q. And of what medical school are you a graduate? A. University of Cincinnati.

Q. Following your graduation from the University of Cincinnati have you done any post-graduate work? [48]

A. I took a year of rotating internship at Highland Alameda County Hospital in Oakland, and I took my eye training at Stanford University Hospital.

Q. And have you been specializing in a particular field? A. Eye.

Q. How long have you been specializing in the eye field? A. Since 1943.

Q. And have you been constantly engaged in practice in that particular field since 1943?

A. Yes.

Q. Did you have any military service during the last war? A. Two and a half years.

Q. And that was in what branch of the service?

(Testimony of Dr. Constantine R. Bricca, Jr.)

A. The AUS, Army of the United States Medical Corps.

Q. Was that practice in connection with your specialty?

A. Yes, general hospitals; I was at Dibble.

Q. Doctor, have you made an examination of Edmund Sundwall, the libellant in this case?

A. I have.

Q. Will you tell the Court the nature of the examination made by you.

A. Well, I saw him yesterday afternoon in my office and again this morning, and I checked his vision, examined him as thoroughly as possible under the circumstances; examined the fundus of the right eye, couldn't see the fundus of the left eye. He has a [49] scarred area in his left cornea which makes it impossible to see farther into the eye.

Q. Now, in addition to the examination that you made yourself, Doctor, you have briefly reviewed the files of the Marine Hospital which have been introduced in evidence in this case, have you?

A. I have.

Q. And you have noted from that examination those matters in that record which you feel are of significance in this particular case, have you, Doctor?

A. Yes.

Q. And Doctor, directing your attention entirely to the left eye, what did you find in your examination of the patient?

(Testimony of Dr. Constantine R. Bricca, Jr.)

A. Well, Mr. Sundwall has marked corneal vascularity of his left eye.

Q. What do you mean "corneal vascularity"?

A. Invasion of the cornea, which is normally a clear, window-like substance, with blood vessels which render it semi-opaque. He has a circular graft and a corneal transplant as the result of one of his surgical operations, which has also become opaque.

Q. Did you notice anything else of significance to you in the left eye upon the examination, Doctor?

A. There are—there is a scarred area superiorly in the left eye, and there is degeneration of the superficial layers of the cornea in the left eye at about eleven o'clock right at the [50] limbus.

Q. That is a degeneration of what?

A. To what would correspond to the skin on the hand, the superficial layers of the cornea in the right eye. There is also some degeneration of these layers in the graft centrally.

Q. From your examination, Doctor, were you able to form any opinion as to the length of time these scars to which you have just referred on the cornea have been present on his cornea?

A. No, I wouldn't be able to state how long they had been present.

Q. You can't tell whether that had been of recent origin?

A. No, I would have to go to the accurate record.

(Testimony of Dr. Constantine R. Bricca, Jr.)

Q. How about this scarred area which you have described, Doctor?

A. That may have been present before or at surgery; I don't know. I will have to retract that statement. The surgical procedure was centrally. This scarred area could have been present before surgery. However, I didn't see the man; I can't say that it was or was not.

Q. You referred to this corneal vascularity, the presence of these blood vessels in the cornea.

A. Yes.

Q. Of what medical significance is that, Doctor?

A. Well, they are more of significance to the patient; actually, they indicate some irritative process in the eye which would [51] cause the entrance of blood vessels which are not normally present in the cornea and thereby cloud vision, make the cornea opaque.

Q. Doctor, what was the extent of the patient's vision at the time you examined him last night in his left eye?

A. In his left eye he could count fingers at a distance of one foot.

Q. Did he have sufficient perception for you to make any measurement of his vision in terms ordinarily used in the eye field?

A. Well, when a patient's vision is so restricted, we do not use the terminology 20/20 or 20/40, which is the common notation, it would be roughly 1/200 what would correspond to it, but we annotate it as counting the fingers.

(Testimony of Dr. Constantine R. Bricca, Jr.)

Q. From the examination that you made last night, Doctor, are you able to explain the reason for this diminution of vision? I mean, what factor in the eye was responsible for it?

A. Well, the immediate reason for his poor vision in his left eye is the opaqueness of the cornea, and he also has lens opacities in the eye.

Q. He has lens what, Doctor?

A. Opacities; in other words, he has a cataract.

Q. Doctor, you have reviewed the records of the Marine Hospital in connection with this man, have you? A. Yes. [52]

Q. Did they reflect what his vision was in his left eye over any period of time?

A. Yes, they do. With the hasty perusal I was able to make, I find that in 1946, according to the records, he had 20/40 vision in his left eye—with correction, that is 20/40.

The next time that the vision was stated was in November of 1948, at this time he had 20/80 in his left eye. Evidently just before he shipped out in March of 1949, he was again seen and there was a note made in the chart that he had lens opacities in his left eye but there was no note made of his vision.

When he was admitted to the Marine Hospital in June of 1949, a note was made that he counted fingers with the left eye at one foot, and the best correct vision was 20/300.

The Court: What do you mean by lens opacities? Do I pronounce it right?

(Testimony of Dr. Constantine R. Bricca, Jr.)

A. Opacities.

Q. How do you spell that?

A. O-p-a-c-i-t-i-e-s.

Q. What does that mean?

A. The lens is normally just the same as a glass or a lense in a camera; and if it isn't entirely clear, it has small opaque areas and that would make your vision poorer or not as good. And any opaque area in a lens is referred to by customary usage as being a cataract. [53]

Q. (By Mr. Pinney): By opaque, we mean, Doctor, with relation to what?

A. Well, an opaque—if it is totally opaque it will not transmit—light will not be able to pass through it. If it is partially, it will be translucent and not transparent. It is a matter of terminology.

Q. In the ordinary process of the use of the eye, is it necessary that light pass through the lens in order that vision be obtained?

A. Yes, clear vision, yes.

Q. And the effect of opacity of the lens would be what on vision? A. To decrease it.

Q. It would decrease it. Now, Doctor, you referred to some scarring? A. Yes.

Q. That you found upon the cornea?

A. Yes.

Q. Do the Marine Hospital records you have examined make any reference to any scarring?

A. Well, his history does here as given in 1946, that he had rust in his left eye in 1933, with recurrent inflammations in this eye. It also gives some

(Testimony of Dr. Constantine R. Bricca, Jr.)

history of his right eye, which I imagine we can dispense with.

Q. Yes, I think so, Doctor, at least I have been interested in [54] the direct examination in the left eye.

A. All right. At this time in the left eye they said there was a scar, and in 1948, in November, there is a picture here in the record by the medical officer of scarring of the cornea of the left eye.

Mr. Cooper: Excuse me. May I just interrupt?

A. Yes.

Q. What was the date of that, Doctor?

A. This last one?

Q. The last entry you were reading?

A. November the 3rd, I believe, 1948. And there is a picture of the scar and evidently they could see into the eye, because he could see out. And then in March there is another note that they contemplated doing surgery on the right eye, but they said they would rather wait, since he was having some difficulty, and his vision seemed adequate at that time to let him ship out. It so states in the notes here, anyway.

Q. (By Mr. Pinney): Directing your attention to that scarring on the cornea to which you have just referred. A. Yes.

Q. I think it is November, 1948. A. Yes.

Q. Is there any additional mention of scarring subsequent to 1948, in the Marine Hospital records?

A. Well, let me see. [55]

Q. That would be scarring of the left cornea.

(Testimony of Dr. Constantine R. Bricca, Jr.)

A. This is the admission of June 24, 1949. I will read you the history.

Q. Yes, all right.

A. "This fifty-five year old white male entered the hospital with a history of having rust lodged in his eye in 1933, which has been followed by occasional episodes of inflammation of the eye since that time. He also incurred trauma of the right eye in January, 1943, which resulted in a traumatic dislocation of the lens and traumatic cataract of the right lens. In April, 1949, heavy, compound oil from the ship got into his left eye, causing an inflammation and increasing cloudiness of vision of that eye. He was hospitalized in Okinawa in the U. S. general Army hospital from May 10th to June 14th. Prior to admission to this hospital he was treated with Homatropine 1% four times a day, and Sulfathizole 5% four times a day, as well as hot compresses."

Further on "Hospital Course" they operated on his right eye and it was noted during the hospital course that the vision in the left eye did not improve materially. That is all the notes there. Oh, Doctor Ridgeway cauterized the vessel or one of the blood vessels leading into the scar of the left eye. That also makes it opaque because that may cause further scarring of the eye. And then he was dismissed from the hospital. He was to [56] return every two or three weeks, to be followed by Doctor Nicholson.

(Testimony of Dr. Constantine R. Bricca, Jr.)

Q. Doctor, what I had in mind was this problem of scarring on the left cornea. A. Yes.

Q. You have a record of scarring, that was November, 1948, in which there was a drawing of the scar. Are there any other drawings subsequent to November, 1948, of the scarring of the left cornea?

A. If there are, they are not in the record.

We have a further record here, February, 1950, February 7th. It says: "This fifty-six year old patient splashed oil in his left eye in April, 1948. Vision has been poor in that eye since that time, objects appearing foggy. Patient depends on left eye for guidance." He states he has a corneal opacity on his left cornea, and that is all.

Q. Doctor, in your examination you have referred to some scarring? A. Yes.

Q. Is the scarring that you found on the left cornea the same scarring that is indicated in that November of 1948, examination? A. No.

Q. Will you tell us what the difference is, Doctor?

A. There is a tremendous difference, because there has been [57] an operation also, so it makes it impossible for me to accurately follow what has happened. According to the records here, his vision has decreased from March of 1949, to June of 1949, and after that time he had two corneal transplants, and he has scars—operative scars—they are now. So I don't know what he looked like before he was operated on.

Q. Doctor, what would be the effect of the cor-

(Testimony of Dr. Constantine R. Bricca, Jr.)

neal scar as indicated in the diagram drawn in November, 1948, upon his vision?

A. Well, as accurately as I can answer that again from the position of the scar in this diagram, it wouldn't be materially—I can't say; I just—he had vision at that time, we know his vision was 20/80 at that time, which is enough to get him around.

Q. What I have in mind is this, Doctor, with that scar standing by itself and without any super-intervening effects of any kind, would you medically expect his vision to remain constant in that left eye or would there be a change?

A. Well, from the position of the scar according to this diagram, one was able to see into the eye; they made notes of examinations into the eye, so evidently you could look around and the patient could see out. He was ambulating by himself, so evidently the scar did not materially impede him. He had had the scar since 1933.

Q. In the record there is some history of opaque-ness of the [58] cornea following April, 1949, is there, Doctor?

A. Yes.

Q. What factors ordinarily cause opaqueness to develop on the cornea? What is the cause of that?

A. There are many factors—irritation, infection, burns, thermal burns; any number of conditions may cause that—disease processes.

Q. Is there in the history that you have examined at the Marine Hospital, or in your examination of the patient, anything to indicate that there was a

(Testimony of Dr. Constantine R. Bricca, Jr.)
disease in the left eye which would cause a corneal opaqueness?

A. Well, according to the record, there is no history of diabetes, syphilis or penetrating wounds. The only history we have is that of rust in the eye in 1933, and his subsequent difficulty with the oil in his eyes aboard the ship.

Q. Doctor, in your opinion as an eye specialist, would introduction of oil in the eye as it was in April of 1949, as disclosed by your examination of those hospital records be likely to result in a corneal opaqueness?

A. Well, to answer the question with any degree of fairness I would have to know what was in the oil. There are all kinds of substances, I don't know.

Q. Let me ask you assume this, Doctor, in your answer: Assume that the witness has testified that when the substance entered his eye it burned. Now, assuming that we have, without [59] knowing what the substance is, that it was some substance that burned his eye, can you with that information alone say with any reasonable probability that it could result in corneal opaqueness?

A. Yes, if it were an irritating substance it could result in corneal opacity—corneal opaqueness.

Q. Would the introduction of any irritating substance possibly result in corneal opaqueness?

A. It is possible, yes.

Q. In your experience, Doctor, in treating eye cases, have you had occasion to treat any number

(Testimony of Dr. Constantine R. Bricca, Jr.)

of cases where there has been a corneal opaqueness introduced by an irritation?

A. Yes, I have seen and treated patients with keratitis following a burn—corneal burn.

Q. Will you say a corneal opaqueness following irritation is a common experience?

A. It depends on the severity of the burn and the resistance of the patient and the treatment. I mean, there are any number of variables.

Q. I appreciate that, Doctor. In your opinion, Doctor, could the condition which you now find in the left eye of Mr. Sundwall have been caused by the injecting into the eye of some substance that irritated it?

A. I will have to answer your question in a round-about fashion and qualify my answer. [60]

Q. Doctor, I want you to answer it—

A. From reading these records, it is obvious that he was being treated for something; evidently he did have a burn of some type, because he was treated for six weeks in the Army hospital in Okinawa, one place and the other, and when he came out his vision had decreased. I came across a statement here as to the location of this corneal scar on his return, I have lost it, some place in the record, and it said the corneal scar was centrally located, which it was not before. With all these factors in mind, I would think that there is some good evidence to believe that the chemical burn incurred by this substance had caused increasing corneal opacity.

Q. Then you did find some reference to a corneal

(Testimony of Dr. Constantine R. Bricca, Jr.)

scar subsequent to this accident which was in a different position than the November, 1948, one?

A. It is the same eye.

Q. This November, 1948, scar was located where, according to the diagram?

A. It is here on the diagram.

Q. It says twelve o'clock?

A. It says, "scar left cornea at eleven o'clock" right here, but there is a picture, so that is a little more graphic.

Q. And the subsequent scar is somewhere in the center? A. That is what the record shows.

Q. This condition you observed personally in the left eye of [61] Mr. Sundwall, Doctor, do you think that is a static condition, or it is likely to improve with time or get worse?

A. Well, I should answer the first part of your question, I don't believe it is a static condition. These things continually change. As to whether it has gotten better or worse, you would get a much better answer by questioning the man who is taking care of him immediately; I can't answer that question.

Q. The hospital records you have examined show a series of three operations? A. Yes.

Q. They are two corneal patches and one to the iris; is that right?

A. That is from the hospital record. I haven't gotten that far in the record.

Q. What is the ordinary practice for a corneal patch?

(Testimony of Dr. Constantine R. Bricca, Jr.)

A. A corneal transplant—there are a number of reasons for using that type of operation. In this sort of a case it would be to remove a scarred area and put in a clear area so the man can see.

Q. And there have been two of these, Doctor, indicating that the first one was not too satisfactory. Is that common or uncommon that when you do one of those transplants that you do not have too good a result?

A. The answer will again have to be qualified. These things are, according to statistics, rated in four classes, and in most [62] cases with burns of the cornea or irritative lesions with blood infiltration are notoriously poor in response. You have a poorer chance to get a good result.

Q. You have mentioned some blood vessel infiltration which you found in the cornea in this left eye.

A. Yes, there is a note on it that there were blood vessels——

Q. Can you describe the extent of that? Is it moderate or severe?

A. It is fairly well marked vessel infiltration of the cornea.

Q. With the state of the blood vessel infiltration as you have observed it——

A. Yes.

Q. ——on your last examination, Doctor, do you think—can you say with any certainty, whether or not an additional patch of that cornea would clear up the opaqueness you have discovered—or transplant, I am sorry.

(Testimony of Dr. Constantine R. Bricca, Jr.)

A. Well, now, I think the question would much better be put to a man who is more qualified in that field than I. That is a very specialized field of work. There are two men actually in San Francisco—three—who do quite a bit of work, and their opinions would be much more valuable than mine.

Q. I take it the operation performed, I believe it was the last one, had something to do with the iris, is that correct?

A. That is what I was told. I haven't—

Q. Have you found the nature of that operation by your perusal [63] of the records?

A. No. Here it is 10/6/50.

Q. What was the operation performed on the iris, Doctor?

A. "To surgery, in a.m. for freeing adhesion anterior iris from graft." In other words, the iris pushes forward against the back surface of the cornea and the graft and has to be freed.

Q. What is the effect? Why does it have to be freed? What is the effect of the operation again?

A. You may have complications following the operation that would further the blood vessels growing from the iris into the cornea, so you would have more trouble.

Mr. Pinney: I have no further questions, Doctor.

Cross-Examination

By Mr. Cooper:

Q. Doctor, it is easier for me to start at the

(Testimony of Dr. Constantine R. Bricca, Jr.)

bottom, so I am going to ask you about that last iris operation. A. Yes.

Q. I believe you said the iris had pushed against the cornea of the eye and that required that the pressure or something be removed; is that correct?

A. Yes.

Q. That was the purpose of this operation?

A. According to the record, that is what I would think, yes.

Q. So that I assume that had nothing to do with the condition [64] of the cornea itself, did it?

A. I can't answer that in any thoroughness.

Q. The answer is you don't know; is that correct? A. That is right.

Q. I mean, you would have to follow the case and see what happened in order to tell, is that correct? A. Accurately, yes, I would.

Q. Now, Doctor, you referred to a corneal opacity, which is nothing more than a scar, isn't it?

A. Yes, that is right.

Q. On the cornea of the eye. The scar was at eleven o'clock using the face of the clock?

A. Yes, according to this diagram here.

Q. And I believe, according to the diagram and according to your knowledge of the eye, they could see into the eye and he could see out of it?

A. Yes.

Q. That is what it amounts to?

A. That is right.

Q. Assuming there were no other complications,

(Testimony of Dr. Constantine R. Bricca, Jr.)

or conditions I will say, that would be a normal vision, would it not; is that correct?

A. Yes.

Q. Now you have said that there is some suggestion of a corneal opacity, I suppose, which was in a more central part of the eye [65] at one time. Is that correct or is it incorrect?

A. I don't believe I said that. You would have—because it isn't in the record here. No, I said there were lens opacities.

Q. Oh, lens opacities? A. Yes.

Q. I misunderstood you then, Doctor. There was lens opacity. And what does it indicate in that regard?

A. That he had a beginning cataract in the left eye.

Q. And a cataract of course forms on any eye after you get along in years?

A. Maybe so, maybe not.

Q. It isn't an uncommon thing?

A. No, it isn't uncommon.

Q. As a matter of fact, eye specialists do not know the cause of it, do they?

A. That is true.

Q. When you have a cataract on one eye, although you don't tell the patient, you anticipate a cataract on the other eye, do you not?

A. It all depends whether you know the reason for the cataract on that first one.

Q. It is a very common occurrence among people beyond fifty that where you have an operation

(Testimony of Dr. Constantine R. Bricca, Jr.)

on one eye that sooner or later you will have a cataract operation on the other?

A. I don't think you can state it categorically, but it isn't [66] uncommon, as you say.

Q. I believe you have told us that, according to that record too, at one time the hospital doctor was of the opinion that the man could return to work; is that correct?

A. I stated that he was seen on 3/11/49 when he went evidently to see about his right eye.

Q. Yes.

A. And the statement of the medical doctor is "It is determined that it would be better to postpone any surgery since vision of the left eye is adequate on light projection the upper field is absent." This refers to light projection on the left eye. "Left eye, scarring of cornea deep with some synechia and pigment therein. Small area of cataract forming in left lens. No further treatment at this time."

Q. You found at the time of your examination of this man which took place yesterday afternoon, Doctor, that there was blood vessel infiltration fairly well marked?

A. Well marked, yes.

Q. You don't know when that occurred, I suppose?

A. No, I do not.

Q. You have no way of knowing?

A. No, I don't. I can say that it didn't occur yesterday, but I can't tell you when.

Q. I see. Can you say also that you don't know the cause of it? [67]

(Testimony of Dr. Constantine R. Bricca, Jr.)

A. I cannot say absolutely the cause, yes, that is true.

Q. It is a thing that occurs not infrequently with an eye, is it not? A. Yes.

Q. And does it have a variety of causes like you have told us, I believe, that a corneal opacity has; that is, it might be any one of five causes?

A. Oh, yes, the causes may be varied.

Q. May be varied. As a matter of fact, now, Doctor, the cornea of the eye, contrary to the common belief, is quite tough, is it not—that covering on the eye, the cornea?

A. Well, in respect to—it all depends what you compare it to.

Q. Well, compared to the skin not on the palm of your hand but the skin on the back of your hand?

A. It is a very durable—it is a very resistant substance.

Q. And it has some thickness, does it not?

A. Yes.

Q. It is designed, according to your doctors' belief, is it not, as a protection against the eye—I mean as a protection for the inner part of the eye?

A. Oh, I don't know whether you could state it that way; it serves incidentally as a protection. It is designed actually as a window and as a light bending area. It acts somewhat as a lens. [68]

Q. To give a different refraction, is that right?

A. It refracts light, yes.

Q. Doctor, you have told us, and I am sure very honestly, that it would be difficult to tell at this

(Testimony of Dr. Constantine R. Bricca, Jr.)

late date as to whether a particular substance would cause scarring of the cornea.

A. Do you mean this particular substance or any particular—some particular substance we can state they always cause it.

Q. Like caustic soda? A. Surely.

Q. Or sulfuric acid? A. That's right.

Q. But if it is mildly irritating—I will put it that way—you can't say whether that would be the cause of a scarring of the cornea, would you? Mildly irritating?

A. I can't answer your question in all fairness. It may be answered easier, it depends on the state of the eye, if it were a previous diseased eye, if it were treated promptly—there are so many variables, I can't answer your question.

Q. I see. That is what I want, Doctor. You say assuming there was an irritation that went in there, Doctor, and you have used the expression "treated properly." Would you say that proper treatment would involve immediate attention?

A. Any injury to the eye should have immediate attention.

Q. That is, even for as long as twenty-four hours would be a [69] very bad thing for the eye, would it? A. Yes.

Q. You have mentioned several causes—I didn't make a note of them all, but you mentioned, I know, irritation, infection, and trauma. That is, trauma is something distinct and different from irritation?

A. Trauma may result in irritation.

Q. Trauma may result in irritation. When you

(Testimony of Dr. Constantine R. Bricca, Jr.)

say trauma, you mean some physical force applied to the eye doing we will say substantial damage, is that correct?

A. Now, Doctor, if some drops of a substance such as paint splashed up in the eye would you anticipate that that would cause any serious physical damage?

A. It may, yes.

Q. It may? A. Yes.

Q. But ordinarily won't?

A. It usually results in chemical burns. There are all different kinds of paints again.

Q. All different paints. It would depend on the type of paint? A. Certainly.

Q. What you have said then it might cause some kind of irritation rather than hurt from the blow itself is what I am trying to ask you. I may be wrong.

A. Yes. [70]

Q. But I have in mind a case, one like I would stick a sharp instrument in a man's eye and that would cause physical damage to the cornea?

A. Yes.

Q. The other one is I may throw acid at him and that would cause irritation?

A. That causes more than irritation; it causes physical damage; it causes burns.

Q. I am using them as illustrations. One is physical damage from the force of the blow?

A. Yes.

Q. And the other is irritation, I suppose?

A. Or an actual burn, let us call it that; not an irritation.

(Testimony of Dr. Constantine R. Bricca, Jr.)

Q. My question is really directed as to the first, from the mere impact, drops of paint or oil, whichever it was, wouldn't cause serious damage?

A. Not unless they were thrown with violent force.

Q. If it just flashed up in your eye?

A. The actual impact would probably cause no damage.

Q. If there is any damage to the eye at all it would be because—assuming it wasn't thrown with a lot of force, it would be traceable to the irritation if the substance was an irritating substance?

A. Yes.

Q. And not knowing the exact nature of the paint or oil, whichever [71] this substance was, you couldn't say whether it would be sufficiently irritating to cause serious damage resulting in an ulcer to the eye?

A. That is true; I can't make that statement.

Q. So the real damage—I mean the scar tissue—can you state was the result or caused by a ulcer on the eye, Doctor?

A. We do not have an actual record of opacity when he was first seen in Okinawa; all we have is what it looked like when he got back, and he had a scar.

Q. And that was at eleven o'clock, as you have told us, according to the record?

A. No, not as far as can see. The scar was central, when he came home. According to this now—in other words, he couldn't see clearly because there

(Testimony of Dr. Constantine R. Bricca, Jr.)
was a scar in his way when he was taken to the Marine hospital here.

Q. And then on November 3, 1948, the only scar indicated by the record was that one at eleven o'clock?

A. That is what the record says.

Q. That is what the record indicates?

A. That's right.

Q. Then, Doctor, would it be a fair conclusion to draw that the other scar or opaqueness had disappeared at that time?

A. Which other scar? I don't follow your question.

Q. You said that one was more central, I believe you told us [72] from the record than the one you refer to as indicated on the record as being at eleven o'clock.

A. One was peripheral, this record describes it.

Q. Peripheral; that is on the margin?

A. That is right.

Q. That is November 3, 1948?

A. That is right.

Q. 1949, rather? A. '48.

Q. '48. Excuse me a minute.

Mr. Pinney: That was before this voyage. That was before this accident.

A. Correct.

Mr. Cooper: Oh, I see. I am sorry; I didn't get the date, your Honor. That was in November, 1948, before this accident? A. That is correct.

(Testimony of Dr. Constantine R. Bricca, Jr.)

Q. On board the Iran Victory?

A. Yes.

Q. That was the eleven o'clock scarring?

A. So it says.

Q. And what was their indication when the first examination was made of the eye when he went to the Marine hospital in 1949?

A. All right. Let me see; I will try to answer your question. The first note here says, "corneal opacity and vascularity left. [73] Left pupil appears round and reacts to light."

Now just a moment. Then they made the note that the vision in the left eye did not materially improve. On October 29, Doctor Ridgeway cauterized the vessel leading into the leukoma of the left eye.

Now let me see if I can find a better description of this. No. It says here, "eye examination"—that is referring to the left eye—"corneal opacity and vascularity left. Fundiscopic examination not possible." In other words, he couldn't see into the eye. This was the time he had his right eye operated on. And that is all of it. Wait a moment here. Oh, here is where I read before.

"6/25/49"—the day after he was admitted. "Tension"—ocular tension—"McLean left eye is 30—within normal limits. Counts fingers left eye at one foot by the window light. No straining left cornea. There is a dense leukoma left cornea with depressed center and some fascularization of edges. Right eye"—"vision left eye—6/28 6/300—best correction 20/30"—excuse me 20/300.

(Testimony of Dr. Constantine R. Bricca, Jr.)

Q. That was a correction?

A. That is right, 20/300. Doctor Schafer sees the patient and they operated on his right lens following this and removed the cataract in the right eye. I am trying to find something about the——

Q. May I ask you what that fascularity means, Doctor?

A. Blood vessels going into the area. It is an indication of [74] activity.

Q. You said something about a deep scar there?

A. Yes.

Q. Or as I got it, a deep opacity?

A. Yes.

Q. Could that be caused, Doctor, as you have told us a while ago from a variety of things?

A. Yes.

Q. Is that an ulcer condition?

A. Well, it may be caused by an ulcer, yes.

Q. You said on direct examination that the cauterization would cause further scarring; is that correct, that was performed at the Marine hospital?

A. It might.

Q. The cauterization performed at the Marine Hospital would cause further scarring?

A. No, no. I didn't say that.

Q. I understood you to say so.

A. I will have to qualify it and get a little technical. Blood vessels grow into the corneal window, and they are cauterized back of the cornea right at the junction of the cornea with the other part of the eye—we call it the limbus—and that may result

(Testimony of Dr. Constantine R. Bricca, Jr.)

in a small scar way in the periphery, way up out on the edge. That would not increase the scarring centrally, because that would be definitely what you do not want to do. [75]

Q. Doctor, in order to clear up my own understanding, you say the record indicates in 1946 there was 20/40 vision in the left eye, I believe that is correct?

A. In 2/26/46, right here, yes.

Q. And in November, 1948, there was 20/80?

A. November 3, 1948, it states here—wait a moment; I will have to read these things. November 3, left eye, 20/80, yes.

Q. The normal eye is 20/20, or 10/10 as it is called, is it not? A. Yes.

Q. Am I correct in believing from 20/40 to 20/80 it had gotten twice as bad?

A. No, no, it isn't a fraction; it is a statement of physical properties. It means that at twenty feet he see what a normal person would see at forty feet. It isn't a percentage-wise thing. The actual vision decrease from 20/20 to 20/40—I believe it is not stated correctly; it is an approximation, it is around 20 or 25 per cent less vision.

Q. It had deteriorated at any rate?

A. He didn't see as much.

Q. In March of 1949, according to my notes here he had lens opacity in the left eye?

A. That is right.

Q. And opacity of course there means the same

(Testimony of Dr. Constantine R. Bricca, Jr.)

as it does in the cornea; it means you can't see through it? [76] A. That is right.

Q. And opaque just simply means you can't see through it, is that correct?

A. Yes. It doesn't indicate the degree of opacity.

Q. But as you have pointed out, there is clear, there is translucent and opaque?

A. Yes, but the lens is an opaque substance, and a little tiny area makes an opacity. It is very confusing, actually.

Q. You can't tell by looking at it the particular area which is opaque, is that what you mean?

A. Not according to the record, and it varies with the individual how much it obstructs his vision.

Q. But it does decrease the ability to see, I will put it that way?

A. True, if it is in the central portion of the lens.

Q. So far as you know, you can't say one way or another you can't say whether this is caused by the irritation—the scar?

A. I can make no statement.

Q. The probabilities are it was not, is that right?

A. I can make no statement; I don't know; I can't answer the question.

The Court: I would make the observation that I think the Doctor has thrown about as much light as it is possible for him to do upon this situation.

Mr. Cooper: Your Honor, I want to get this thoroughly [77] decided. If you feel that he has, I will terminate my cross-examination.

Mr. Pinney: I have no further questions of this Doctor.

The Court: The Doctor may be excused.

We will adjourn now until two o'clock.

(Thereupon a recess was taken until two o'clock, p.m.) [77A]

Afternoon Session, Wednesday, February 14, 1951

The Court: Proceed, gentlemen.

EDMUND E. SUNDWALL

resumed the witness stand, and having been previously sworn, testified as follows:

Cross-Examination

(Resumed)

Mr. Pinney: Do you wish to continue the cross-examination of the libellant, Mr. Cooper?

Mr. Cooper: I am going to ask the reporter to give me the last question.

(The reporter read the record as requested.)

By Mr. Cooper:

Q. Now, Mr. Sundwall, you told us you went ashore at Okinawa and then you went to the Army hospital.

A. Yes, sir.

Q. And you saw a doctor, of course?

A. Yes, sir.

Q. And he made an examination of your eye. Will you tell us what he said about your eye?

A. Well, he says, "Forget the ship and forget

(Testimony of Edmund E. Sundwall.)

the cargo; forget everything." He said, "I will have an ambulance take you to the hospital." That is all he told me—and the dispensary. So they took me to the hospital then.

Q. You went to the hospital. I believe you told that they just put [78] drops and bandages on your eye in the hospital.

A. Yes, I came in very late that night.

Q. Did the doctor at the hospital tell you what was wrong?

A. He did not.

Q. He did not?

A. Not that I know of. He might have. I stated to him how it happened.

Q. You stated to him how it happened?

A. Yes, sir.

Q. Now, Mr. Sundwall, you have described in a limited way that your eye burned some. You told us that you did yourself, without taking anybody with you, you went and washed it out?

A. Yes, sir.

Q. How did it feel after you washed it out?

A. Well, I guess it were relieved, I suppose, somewhat.

Q. At any rate you supposed it was relieved. It was relieved or you would not have gone back to work again, would you?

A. I guess it would be relieved to get some oil out.

Q. Pardon me?

A. I imagine it was some relief to get some of that oil out of my eye.

(Testimony of Edmund E. Sundwall.)

Q. Just how did you wash it?

A. I just put the luke warm—cold and hot water together, make it luke warm, put it on my face.

Q. Put it on your face and wash both eyes [79] out?

A. Yes.

Q. Did this oil get in both eyes?

A. The only thing I know is only one eye was burning, was sore.

Q. That relieved it and you went back to work again?

A. Yes, sir.

Q. As a matter of fact, it didn't bother you any for a couple of days, did it?

A. Oh, well, that was a little sore all the time, dying out slowly.

Q. A little sore, but it wasn't sore enough that you were concerned about it, were you?

A. Well, some time after that happened, I thought it would be all right, and when I went to the clerk aboard the ship he never mentioned anything that it was anything serious. He told me that these eye drops was too strong, so he gave me some salve.

Q. That is after you went to see him?

A. Yes.

The Court: That was the purser, was it?

Mr. Cooper: Yes, I believe he said the purser. That is the way I understood him.

Q. Is that the only sensation you had now, Mr. Sundwall. a burning sensation?

A. Just sort of a burning sensation.

Q. A stinging sensation? [80]

(Testimony of Edmund E. Sundwall.)

A. Yes; it got worser and worser after—I imagine when I was laying in the hospital, then it got worser and worser.

Q. When you went to the hospital?

A. During the time I was laying in the hospital the eye got worser and worser, very painful.

Q. As a matter of fact, when you did go to the purser, without asking you when you did go to him, didn't he roll back your eyelid and look at the eye?

A. He might. I guess he did maybe; I don't know.

Q. You don't recall just exactly what took place, is that it?

A. No, I wouldn't say if he did or not. The only thing I know——

Q. As a matter of fact, Mr. Sundwall, if the purser testified that you did not go to see him for six days, would you dispute that?

A. Yes, I dispute that, because I can't see how the oil could have been in the eye and the eye drops six days afterwards.

Q. That was the next day now; is that your best recollection?

A. No, I believe it was the first day, because——

Q. You believe now it was the first day?

A. Yes.

Q. But when you testified a little over a year ago, you thought it was the second day, didn't you, then?

A. Well, then——

Mr. Pinney: I think his testimony in that re-

(Testimony of Edmund E. Sundwall.)

spect speaks [81] for itself, your Honor, whatever he said.

Mr. Cooper: I guess that is correct.

The Court: All right.

Q. (By Mr. Cooper): The record here from the Marine Hospital, Mr. Sundwall, shows that your sight was impaired or not as good as normal sight in 1948. Do you remember going to the doctor in the United States Marine Hospital then?

A. In 1948?

Q. Yes, November, 1948.

A. I suppose that is the time about the cataracts that I went up there to see him.

Q. That is the time they looked at your eye and found that it was 20/80, as they described it?

A. That might be, I thought it was in December or January.

Q. You are not sure about that? A. No.

Q. That was your left eye, though, wasn't it?

A. I beg your pardon, sir?

Q. That was your left eye that they looked at?

A. No, my right eye.

Q. Your recollection is that you went to see about your right eye, is that it?

A. No, I found out through a gentleman who told me I had a cataract or something in my eye and I should go up to the doctor and see about it. The next day I went up to the Marine Hospital. [82] I don't know that it was in November; I always thought December or January. I never thought much of it at that time anyway.

(Testimony of Edmund E. Sundwall.)

Q. Now, did you bathe your eye after the first time, Mr. Sundwall?

A. The first time I what?

Q. You went to the forecandle and bathed your eye, washed your eye in luke warm water, you said?

A. Yes, sir.

Q. Did you wash it after that?

A. After I were finished with the work I had to cleanse it, because there was a lot of oil and you couldn't do that with water. I had to use some kind of lava soap to get the rest of the paint off my face.

Q. That was after you went to the shower after you were off watch?

A. Yes, after.

Q. You just gave yourself a general bath at that time?

A. Well, I don't know; they just came over and asked if I preferred water in there.

Q. What I meant when I asked you was, whether at any time after the first time you washed your eyes to get the oil out, if you washed your eyes especially at any other time?

A. No, no, the purser did that. The purser washed my eye out with that borax or whatever it was in the eyeglass.

Mr. Cooper: Will the Court excuse me just a moment? I [83] realize I am going a little slow.

Q. Besides steering the vessel and looking at the compass, of course you had to go up what they call ladders on the ship to get up to the bridge?

A. Yes.

(Testimony of Edmund E. Sundwall.)

Q. How many decks is that above where you bunk?

A. It is one, two, three—three.

Q. About three decks? A. Yes.

Q. You go up and down ladders, do you?

A. Yes.

Q. In order to get to the bridge? A. Yes.

Mr. Cooper: I believe that is all, your Honor.

Redirect Examination

Mr. Pinney: I have just one or two questions I would like to put to the witness on redirect examination.

By Mr. Pinney:

Q. When you first saw the purser did you tell him what had happened? A. Yes, sir.

Q. And if he made any written report of what you told him, did he show it to you?

A. He never mentioned anything about me or any report or anything; the only thing he did was clean my eye out.

Q. So you don't know what the purser did? [84]

A. No, sir.

Q. Did you report this to anybody other than the purser, any of the officers of the ship?

A. I told the second mate on the watch, or the third mate on the watch, that I got oil—paint in my eye. He said it is too bad. Then I reported I can't see to steer after that.

Q. When did you report that to him?

(Testimony of Edmund E. Sundwall.)

A. I reported that—I had the first wheel Sunday morning some days after the accident. I says, “I can hardly see the compass anymore.” He says “Just stick it out; in a few minutes you will soon be relieved.” We only steer one hour and twenty minutes; we divided four hours in three parts there. That night I went up I could see better than I could before, because that is the only number——

Q. That is one of your superior officers?

A. I told the third mate then, “It is impossible for me to do it anymore.” So he reported it to the chief mate or the captain, whoever it was.

Q. After you first saw the purser and he gave you some treatment, did you eye get better then or did it stay the same, or did it get worse?

A. I guess it was about the same; maybe it was relieved; maybe it felt better for some time. I can’t recollect exactly that. I know my eyesight started to fade and it was sore. I got better certain days, maybe, and got worse again. [85]

Q. How much were you making as a seaman? What were you making? How much money?

A. How much money?

Q. How much money a month?

A. I were making \$233.50 a month.

Mr. Pinney: Thank you. I have no further questions.

Recross-Examination

By Mr. Cooper:

Q. Mr. Sundwall, you said you couldn’t do it

(Testimony of Edmund E. Sundwall.)

anymore; I didn't quite catch it. That was just before you arrived at Okinawa you told the third mate that you couldn't stand your watch anymore?

A. Yes.

Mr. Cooper: I am going to show Counsel this accident report.

Q. I am going to show it to you, Mr. Sundwall. Can you read it?

A. No, I can't. You better read it to me.

Q. I see I am going to have difficulty. Can you see your name here—I mean what appears to be your name on that, Mr. Sundwall, down at the bottom of that paper?

A. No, no, no, I can just make out the paper.

Q. You can't see well enough to identify your signature?

A. No.

Q. Isn't it a fact now—I want you to search your recollection—that after this purser made out this report of personal injury that he read it over to you and asked you to sign it? [86]

A. Not that I can recollect. I don't remember him making any—I suppose they have to make a report of an accident.

Q. Yes, they do.

A. I don't know if they did or not.

Q. You don't remember whether you did or not?

A. No.

Q. You have had an accident on board ship before, haven't you?

A. No, sir, except in '33, and there was nothing

(Testimony of Edmund E. Sundwall.)

to it; I just went to the doctor and back to the ship again.

Mr. Cooper: I wonder if I could see the original complaint or libel in this case. If the Court please, I am going to offer this in evidence. The paper appears to be signed, and we have for comparison the original complaint with his signature. Your Honor will appreciate the difficulty I am in here. I will ask that that be compared to the signature on the libel.

Mr. Pinney: If your Honor please, we do not wish to interpose any objection to the admissibility on the grounds that Mr. Sundwall cannot identify that as his signature. I don't know whether it is or not. If Mr. Cooper believes it is, if it looks fairly like the signature on the libel and your Honor feels that it is his signature, we will interpose no objection.

The Court: I want the record to show that this Court is not an expert on handwriting, but from all appearances the two signatures are the same. In the absence of any objections, I will admit it into evidence. [87]

Mr. Pinney: We will make no objection.

The Court: Well——

Mr. Cooper: The record will show that it is admitted as Respondent's next in order.

The Court: Without any objection.

The Clerk: Respondent's Exhibit B in evidence.

(The report referred to was marked Respondent's Exhibit B in evidence.)

(Testimony of Edmund E. Sundwall.)

Q. (By Mr. Cooper): You have just told us—it wasn't gone into on direct; you told us on redirect that you did report this accident to the third mate.

A. Yes, when I went to stand the wheel.

Q. When you went to stand the wheel?

A. Yes.

Q. But there are two men on board the ship that it is customary to report accidents to, are there not; one is the purser and the other is the first mate?

A. Yes, but of course the third mate was on my watch and saw the eye was inflamed and things like that. I suppose I told him.

Mr. Cooper: I want to move to strike that out, what he supposes.

The Court: It may go out.

Mr. Cooper: I believe that is all.

Mr. Pinney: I have no further questions. Step down, Mr. Sundwall. [88]

If your Honor please, that is the libellant's case.

Mr. Cooper: I am going to ask the mate to take the stand, if the Court please.

WALTER E. BRUNSCH

called as a witness in behalf of the libellant, being first duly sworn, testified as follows:

The Clerk: Will you state your name for the record, please.

A. Walter E. Brunsch.

(Testimony of Walter E. Brunsch.)

Direct Examination

By Mr. Cooper:

Q. Mr. Brunsch, where do you live?

A. 2415 - 37th Avenue, San Francisco.

Q. What are you doing at the present time?

A. I just finished a job as night relieving officer on the S.S. Mount Furishima.

Q. What company operates that ship?

A. Pacific Factors.

Q. What license do you hold, Mr. Brunsch?

A. Master.

Q. And how long have you held that?

A. Approximately eight years.

Q. How long have you gone to sea?

A. About eighteen.

Q. About eighteen years. Were you mate of the Iran Victory on the voyage commencing in early April, 1949? [89]

A. Yes.

Q. And that voyage was concluded about when?

A. Oh, I wouldn't be able to state offhand.

Q. Do you remember a seaman serving on there by the name of Sundwall that had trouble with his eye?

A. I remember a seaman by that name that was left in Okinawa due to some eye injury.

Q. Did he personally ever report the accident to you?

A. No.

Q. I suppose you learned it in ordinary course through the purser, is that correct?

A. That is right.

(Testimony of Walter E. Brunsch.)

Q. Mr. Brunsch, do you recall that on that boat you used what was called Texacoat to put on the decks of the ship? A. Yes, sir.

Q. Is that something that is commonly used on board vessels to put on a deck?

A. Yes, sir.

Q. You weren't present when Mr. Sundwall and two seamen were getting oil or this combination of material out of a drum on the deck on the 8th of April, were you? A. I was not.

Q. I mean the 28th day of April, pardon me. You weren't present? A. No, sir. [90]

Q. You know of no accident that happened to Mr. Sundwall? A. No, not at that time.

Q. You recall that, I suppose, Mr. Brunsch, that Texacoat comes in a drum? A. Yes, sir.

Q. And will you tell us whether or not in your eighteen years' experience on board vessels you have ever seen a pump used to get material of this general character out of a drum?

A. No, I have not.

Q. How long were you on the Iran Victory, do you recall? A. Very close to two years.

Q. Was there ever a pump on board the Iran Victory during that period?

A. Not for that purpose.

Q. Will you tell us whether or not the ships you have been on ever provided a pump for the purpose of getting material like Texacoat out of a drum?

A. No.

Q. Did you ever know of anybody to get any of

(Testimony of Walter E. Brunsch.)

that in their eye in your experience on board ship?

Mr. Pinney: I will object to that, your Honor. That is pretty far-fetched.

The Court: Objection sustained.

Mr. Cooper: I believe that is all. [91]

Cross-Examination

By Mr. Pinney:

Q. Mr. Brunsch, are you familiar with this product Texacoat? A. To a certain extent, yes.

Q. Do you know what its composition is, what is in it? A. No, I don't know its formula.

Q. Now Mr. Cooper referred to fifty-gallon drums. As a matter of fact, these are what are commonly referred to as fifty-four gallon drums that it comes in, does it not?

A. Not necessarily. In the trade they are called fifty-gallon drums.

Q. Do you know how much the drums of Texacoat aboard the Iran Victory on this particular voyage held? A. Well, they were full.

Q. You don't know whether they were fifty gallons of fifty-four? A. No, I do not.

Q. Do you know how heavy that Texacoat is by the gallon? A. No.

Q. Do you know from your own—you have had experience in dealing with this particular product or similar products?

A. That's right, but I never weighed it.

Q. Can you compare it with water?

(Testimony of Walter E. Brunsch.)

A. It is a little heavier than water.

Q. Is it heavier than heavy fuel oil, do you know? A. No, not that heavy. [92]

Q. Do you know whether or not on the 28th day of April, 1949, the drums of Texacoat aboard the Iran Victory were full or if they had been partly used?

A. To the best of my knowledge they were full.

Q. Do you know where they were stored aboard the ship? A. Aft.

Q. On one of the decks?

A. On the main deck aft.

Q. You have testified under direct examination that you have never seen a pump used to remove material of this nature from a drum; is that correct?

A. Material of that nature, which is paint, no.

Q. Ordinarily in your experience in eighteen years at sea when you go about painting a portion of a vessel, how much do you extract from one of these large drums?

A. You usually use—get a paint pot—that is one of the five-gallon pots, put the material in that, and then each man takes it to the part of the ship that he is working on.

Q. What is the process ordinarily used to transfer the paint from the large fifty or fifty-five gallon drum to the five-gallon paint pot?

A. Open up the air bung and the bigger bung and tilt it over into your pot that is standing underneath.

Q. In tilting it over, starting out with a drum

(Testimony of Walter E. Brunsch.)

assuming it is full, it is rather heavy—you can't give us the exact weight? [93]

A. No, I can't give you the weight.

Q. Isn't there a lot of spilling involved in tipping a flat drum? A. Not necessarily.

Q. Into a five-gallon pot?

A. Not necessarily, because you hold your five-gallon can up to where your material is coming out.

The Court: May I interrupt?

Mr. Pinney: Yes.

The Court: How tall is one of these drums?

A. It is a regular fifty-gallon drum that you get your oil in or any other type of—it is a regular commercial fifty-gallon steel drum.

Q. What is the circumference of it, approximately?

A. Oh, I would say it is about twenty-eight inches in diameter.

Q. How many men does it require in an operation of that kind?

A. Usually two men to handle the drum and one to handle the bucket.

Q. That is, two men to tilt the drum?

A. One gets on each side and they tilt the drum, and the other fellow puts the bucket so you don't lose your material.

Mr. Pinney: Are you through, your Honor?

The Court: Yes.

Q. (By Mr. Pinney): I don't believe you answered his Honor's question on the height of the

(Testimony of Walter E. Brunsch.)

drum. Was it somewhere in the [94] neighborhood of four feet?

A. He didn't ask me the height; he wanted to know the diameter.

Q. What is the height of it, approximately?

A. Well, I think approximately forty inches; that is just a guess.

Q. In the eighteen years you have been at sea, what type of ships have you sailed on? Have they all been steam?

A. Yes.

Q. And have they all been cargo ships or have they been ships of different types like tankers and passenger ships?

A. They have been of various types.

Q. The Iran Victory was a cargo ship, wasn't it?

A. Yes.

Q. How many voyages have you made on a cargo ship?

A. Well, that is hard to say.

Q. Have you made a great number?

A. Probably two or three hundred.

Q. Have you ever been aboard one of those ships as an a.b.?

A. Yes.

Q. How long were you an a.b.?

A. About two years.

Q. Ever served as a boatswain?

A. Acting boatswain.

Q. How long did you serve as an acting boatswain?

A. Six months. [95]

Q. My questions are restricted to your time as an a.b. on cargo ships. How long have you served as an a.b. over all on any type of ship?

(Testimony of Walter E. Brunsch.)

A. Approximately two years.

Q. That was the same situation when acting boatswain on all types of vessels?

A. That's right.

Q. In what capacity have you shipped out as other than as an a.b. and as an acting boatswain?

A. Right through the ranks as an officer.

Q. From there you either went to third mate or acting third mate?

A. I started as a cadet, and from there on I went on through.

Q. It is a fact, is it not, that it is the boatswain aboard ship who supervises the activities of the a.b.'s. in the work that they are conducting?

A. Under the direction of the mate.

Q. In your capacity as a mate you didn't observe what directions the boatswain gave to the men with respect to what was to be accomplished, did you?

A. Will you restate that question?

Q. Let me withdraw it and start it over again. You gave general instructions to the boatswain to accomplish this and this and this, is that correct.

A. That is right. [96]

Q. And then you left it up to the boatswain to choose the manner in which he delegated the work to the men, is that correct?

A. That is true.

Q. And you just looked to him for the finished result?

A. No, I can inspect the work as it progresses.

Q. You inspected the work while it was in progress and looked to the boatswain to produce the

(Testimony of Walter E. Brunsch.)

finished result at the end of the watch or whenever it should have been finished?

A. That is right.

Q. Have you have ever on any occasion on any ships that you sailed on as an officer inquired as to whether or not there were pumps aboard ship to transfer liquid from one container to another?

A. Yes, every ship has pumps.

Q. Every ship has pumps? A. Right.

Q. Were there pumps aboard the Iran Victory?

A. Yes.

Q. What kind of pumps were aboard the Iran Victory?

A. They have steam and regular pumps; they have lifeboat pumps. There are a number of different types of pumps.

Q. And there aboard the ship were pumps that are not used in connection with either the lifeboat or the actual running operation of the ship; by that I mean in connection with steam pumps or things of that nature, are there not? Well, let me [97] withdraw the question. Aside from the lifeboat pumps, were there on the Iran Victory any other small hand pumps of any kind? A. Yes.

Q. How many such small hand pumps were aboard the Iran Victory? A. One.

Q. And where was that customarily kept?

A. It belonged to the engineers.

Q. It belonged to the engineers. For what purpose did the engineers use it?

A. For transferring their diesel oil and coal oil.

(Testimony of Walter E. Brunsch.)

Q. How about the other ships on which you have served as an officer? Have there been small hand pumps kept aboard those ships other than lifeboat pumps? A. Yes, for the same purpose.

Q. It is a fact, is it not, that the deck department frequently, if they do not have a pump of their own, borrows a pump from the engine department? A. Not to pump paint.

Q. Let me ask you the question again. It is a fact, is it not, that the deck department, if they do not have a hand pump of their own, frequently borrows a hand pump from the engine department?

A. No.

Q. In your experience does the deck department ever borrow a hand pump from the engine department? [98] A. Yes.

Q. For what purpose would the deck department borrow such a pump?

A. To transfer coal oil up into the coal oil storage tank or your paint thinner.

Q. How do you get paint thinner aboard a ship? How does that come packed?

A. Well, it comes in different ways; you can get it in five-gallon cans, one-gallon cans, or fifty-gallon drums.

Q. Have you ever got in anything larger than fifty-gallon drums?

A. Not unless they have a tank for it and pump it there.

Q. You have been aboard ships where the pump

(Testimony of Walter E. Brunsch.)

was used to transfer paint thinner from drums, haven't you? A. Paint thinner, yes.

Q. What else have you seen a pump used for to transfer a liquid from one container to another?

A. Kerosene and diesel oil.

Q. How do you get kerosene aboard a ship?

A. Fifty-gallon drums.

Q. Fifty-gallon drums?

A. As a usual thing.

Q. What was the other thing?

A. Diesel oil.

Q. How do you get the diesel oil aboard the ship? How does that [99] come? In fifty-gallon drums?

A. In some cases, if they don't want too much; other words, they pump it aboard to the tank direct.

Q. Have you ever seen a hand pump used to transfer diesel oil from fifty-gallon drums?

A. No.

Q. Anything else that you use a hand pump aboard the ship for to transfer liquids?

A. No, I can't think of anything at the moment.

Q. When you transfer paint thinner from fifty-gallon drums is there any reason why you need a hand pump? Why can't you just pour it?

A. Because we would put it into a tank that is above the deck level.

Q. Is that true on all ships that the tank in which you keep paint thinner is above the deck level?

A. No. You asked if I had ever seen it done.

(Testimony of Walter E. Brunsch.)

Q. Is that the only occasion in which you have ever seen a pump used to transfer paint thinner, when the container to which it was to be transferred was about the deck level?

A. No; I don't know——

Q. As a matter of fact, you use these hand pumps frequently to transfer liquid from fifty-gallon drums whether it is to be transferred to above the deck level or not?

A. Are you asking me or telling me? [100]

Q. I am asking you? A. No.

Q. As a matter of fact, that is common practice aboard American merchant ships to transfer liquids out of fifty-gallon drums, isn't that a fact?

A. Not to my knowledge.

Q. But you have seen it done on occasions when you were transferring a liquid from one container which was not above the deck level of the fifty-gallon drum? A. In certain cases, I have.

Mr. Pinney: I have no further questions.

Redirect Examination

By Mr. Cooper:

Just one other question.

Q. Mr. Brunsch, what other steamship companies have you served other than P. F. E. on the Iran Victory?

A. Matson Lines, American Mail Line, Calmar Line.

Q. Calmar?

(Testimony of Walter E. Brunsch.)

A. Yes, and I just finished with the Pacific Factors.

Mr. Cooper: That is all.

Mr. Pinney: I have no further questions.

The Court: Mr. Brunsch may be excused. Next witness. [101]

* * *

DR. SAMUEL F. BOYLE

called as a witness in behalf of the respondents, being first duly sworn, testified as follows:

The Clerk: Will you state your name for the record.

A. Samuel Frederick Boyle.

Direct Examination

By Mr. Cooper:

Q. Doctor Boyle, what is your profession?

A. I am a physician, eye specialist.

Q. Are you licensed to practice in the State of California? A. Yes, I am.

Q. Doctor, how long have you been a physician?

A. I have been a physician since 1917.

Q. 1917. Have you specialized in any particular field?

A. I have specialized in diseases of the eye for twenty years.

Q. What doctors are you associated with?

A. Doctor Otto Barkan and Doctor Furguson.

Q. How long has that association existed? [105]

A. For twenty years.

(Testimony of Dr. Samuel F. Boyle.)

Q. Doctor, did you have occasion to examine Mr. Sundwall, Edmund Sundwall, in December, I think it was, 1949?

A. Yes, I saw him on December the 20th.

Q. And he is the gentleman sitting behind Mr. Pinney, the attorney in this case? A. Yes.

Q. Doctor, what did you find at that time?

A. I found that he had lost the sight of the right eye some years before and he consulted—he was examined on account of a history of the left eye. I found that he had a heavy scar of the cornea of the left eye and his vision was reduced to 20/200.

Q. Doctor, from your examination of the eye at that time was it your opinion that an operation was indicated? A. No.

Q. Under your characterization, was that eye of considerable use or was it not at that time?

A. No, he had—he could read the largest letter of our chart, so that I assumed that he could do some rough work at that time.

Q. You say he could read the largest letter. Assume it is in evidence, which it is, that in November, 1948, the vision of the eye described was 20/80, what did the reduction in vision amount between that time and the time you examined the eye?

A. The difference between 20/200, the vision he had at the time [106] I examined him, and the vision of 20/80 is the difference of three lines in our chart.

Q. Doctor, was it your opinion if the eye had

(Testimony of Dr. Samuel F. Boyle.)

been left alone that it would have improved or would it likely get worse?

A. Well, it was healed when I saw him and I assumed that it would remain healed. It seemed firm, and if it remained healed it might improve just slightly.

Q. Doctor, when you saw him in December, 1949, was there only one cornea scar or was there more than one?

A. There was one large central scar in that cornea which covered the pupillary area.

Q. It is in evidence here that in November, 1949, there was a corneal scar at eleven o'clock. Did you notice that in the hospital records that you examined?

A. Yes, I did.

Q. At this time when you examined him in December, 1949, was there any dividing line between that corneal scar and the larger scar?

A. No, there was just one large scar, which I imagine encompassed the other one.

Q. Doctor, the history of this case is that while Mr. Sundwall was with two other seamen pouring oil out of a drum into a bucket, that some of this oil splashed up and got on his face and some of the drops got into his eye. The oil has been described as somewhat heavier than water. Will you tell us, whether in your [107] opinion and from your experience in other cases, the splashing up of a fluid of that kind into the eye would cause trauma which in turn would cause an ulcer and a scarring?

(Testimony of Dr. Samuel F. Boyle.)

A. It depends upon the character of the fluid that splashes into the eye.

Q. The question that I was really asking you first, Doctor, was whether the force of the blow would cause trauma? A. No, I do not—

Mr. Pinney: Just a moment, Doctor, I think this is highly speculative; there is a lack of testimony in the record on which to propound such a question as to the force of the blow. He asked him whether the splashing of some fluid into the eye would have sufficient force to cause trauma. I think he should lay a more definite foundation for the Doctor's answer. If he can't I don't think he can properly put that question.

The Court: The objection will be overruled.

Mr. Cooper: Do you understand the question now, Doctor?

A. Yes. I wouldn't think that splashing of fluid from a few feet into an eye would cause any trauma, any serious damage at all.

Q. Will you tell us, Doctor, by comparison, if you think advisable, what the cornea on the eye is? What is the nature of it—I will put it this way—as to toughness as compared to some other tissue of the body?

A. The cornea is the outer transparent covering of the eye, [108] the glass of the eye, and it is really very tough. It is like the skin, even tougher, and it is hard to penetrate it. Although it is very sensitive, it is quite strong. It is as strong as the skin or stronger.

(Testimony of Dr. Samuel F. Boyle.)

Q. You said sensitive. Do you mean sensitive from a nerve standpoint?

A. Yes, sensitive to pain and injury.

Q. If it does have pain and injury, what is the physical effect on the patient?

A. Well, the patient has a sensation of pain, has tears and blinks the eye. It is the same sensation as a person getting a cinder in their eye, which is a well-known phenomenon.

Q. And ordinarily, Doctor, when you get a cinder in your eye, once the cinder is removed what is the effect of the it?

A. The patient is usually cured; ninety-nine times out of a hundred, I should say.

Q. That is, if he got such an object as a cinder—how many times out of the hundred do you say, Doctor?

A. Ninety-nine times out of a hundred.

Q. Assuming that you had a fluid that was mildly irritating and within a comparatively short time after the mishap that caused the fluid to get in the eye, the eye was washed with luke warm water, and within an hour or two after that the eye was again washed, either with the assistance of another person or by the man himself, with an eye cup, what would you anticipate [109] would be effect of removing any irritating cause?

A. Well, that would be considered good treatment, and unless the fluid were something like lye or very strong acid or scalding material of some kind, it should be sufficient to relieve the symptoms.

(Testimony of Dr. Samuel F. Boyle.)

Q. Doctor, what is the usual effect of tears in the eye following an irritation where the material is fluid and not a hard substance?

A. Tears—that is nature's method of cleansing the eye and washing away any foreign material or substance in the eye.

Q. Now, Doctor, if there was serious irritation, irritation enough to cause an ulcer, from your experience over twenty years as a specialist, would you expect or would you consider it likely that a man could continue to work, which involved standing lookout on the head of the vessel and also standing a watch described as a wheel watch which involved looking at a compass—a lighted compass. Would you expect or anticipate if this were more than mildly irritating substance that a man would be able to do that sort of work?

A. Well, if he had two eyes, he might be able to do it; but in this case the man had just one eye, and if there was any severe irritation he would be blinking, tearing and difficulty doing any work that required use of the eyes.

Q. Doctor, it is the history of this case and particularly to the left eye, that in 1933 there was some rust got in the eye [110] which caused some trouble, and that on a dozen times thereafter over a period of time not indicated in the record he had what is called recurrent irritation of the eye. Now I will ask you first, whether that in your experience would be caused by the rust?

A. No, I should think not.

(Testimony of Dr. Samuel F. Boyle.)

Q. What would be the cause, Doctor, of that recurrent irritation?

A. Well, any infection in the eye would cause recurrent irritation. That is the commonest cause which one sees in private practice—mild infections as a rule.

Q. It is also in evidence here that the patient here had what is described as acute iritis, I believe the record shows, in 1941 and '42 of the left eye. Will you tell us what that is and what it indicates in the way of a cause if there is no history of it being caused by trauma?

A. Iritis is an inflammation of the colored portion of the eye; and if the eye has not been injured, it is from some internal disorder or some internal intoxication—some poison in the blood that happens to go to the eye and causes inflammation in the iris.

Q. Doctor, it is in the history of this case also that there was a corneal scar at eleven o'clock, that was in 1948, and there is no history of trauma having caused that scar. What would be your conclusion as to the cause of it, Doctor? [111]

A. Scars of the cornea, apart from those that are caused by injury, are the result as a rule of ulceration—ulcer of the cornea, which heals and leaves a scar.

Q. And like the iris, is that due to infection, usually?

A. Yes, but not from internal infections, as a rule. Infection often starts in the lid, what is com-

(Testimony of Dr. Samuel F. Boyle.)

monly called a cold in the eye. and following that there may be an ulceration.

Q. Which is not due to trauma—I mean may not be; it is not due to trauma if there is no history?

A. Not as a rule, no; if there is no history it is due to other causes.

Q. Doctor, from the history of the case which has already been recited to you, will you tell us whether, in your opinion, the condition of the eye which caused further scarring was due to the same general cause that caused the condition in the iris and also the cornea on the previous occasions?

A. Well, viewing the scar, I can't tell the cause of it; but this man had a history of previous ulcerations; he also had the history of the fluid splashing into the eye. Now, if the fluid was damaging enough, due to its character, to produce ulceration, it could produce further scarring of the eye. Further scarring could also be caused by the same infections that had produced the previous attacks.

Mr. Cooper: I believe that is all. [112]

Cross-Examination

By Mr. Pinney:

Q. Doctor, before coming here to testify this morning, you have looked at the records of the Marine Hospital and familiarized yourself with them, have you not?

A. I have looked over them.

Q. The records of the Marine Hospital show—

(Testimony of Dr. Samuel F. Boyle.)

I believe it is the 1946 entry shows that there is a corneal scar at eleven o'clock on the left eye?

A. Yes.

Q. You yourself——

Mr. Cooper: Wasn't that '48?

Mr. Pinney: I may be mistaken.

Mr. Cooper: '48, I think.

The Court: I think my notes reveal it was '48.

Q. (By Mr. Pinney): In any event, you are aware of the fact that one of the examinations shows a corneal scar at eleven o'clock; is that correct?

A. Yes.

Q. Will you find that in these records, Doctor?

A. I see a drawing.

Q. Doctor, I will give it to you; just stay on the stand.

A. Pardon me.

Q. That is all right, Doctor. That was the 1948 entry that showed the corneal scar, is that correct?

A. Yes, November 3rd; it says here 1948, and the drawing shows the right eye and also the left. The scar appears to be on the [113] left, according to this diagram.

Q. In that report of the Marine Hospital records that you are examining, is there any explanation which would account for the presence of that scar at eleven o'clock?

A. It says nothing here to that effect.

Q. So as far as those records are concerned, you can't form any opinion as to the cause of that scar?

A. (No response.)

Q. (Continuing): Will you turn back to the

(Testimony of Dr. Samuel F. Boyle.)

1946 slip, Doctor? Does the 1946 entry say anything with respect to the left eye?

A. It says that he states "struck in eyes with banana lift 1940, defective vision in both eyes since. In hospital Cuba Island twenty-eight days."

The Court: When was that, Doctor? What is the date of that?

A. That was February 26, 1946.

Q. (By Mr. Pinney): Is there anything in the record before you to indicate whether or not there was or there was not a scar on the cornea of the left eye at the time of that 1946 examination?

A. No; all it says about the left eye is that the vision was 20/70 and with a glass he was able to read 20/40 at that date.

Q. So you can't tell from those records whether that scar was there in '46 or whether it wasn't, is that correct?

A. No; it just says he has defective vision in both eyes on that [114] date.

Q. Is it possible, Doctor, that that scar which was observed in the November, 1948, examination might have been caused by this history of rust in his eye back in 1933? A. It might have been.

Q. That is the type of thing that you would expect might cause a corneal scar?

A. It is a very large scar, and usually rust in the eye produces a small scar unless there has been an ulceration and infection.

Q. You are not able to determine from the Marine Hospital records you have examined and the

(Testimony of Dr. Samuel F. Boyle.)

history you have taken from the patient what the reason for that scar is; it might have been from infection, it might have been from trauma; it might have been from any other cause that ordinarily results in scarring, is that correct?

A. Yes, except rust in the eye if it is removed leaves little scars. That is the ordinary injury we see in the office.

Q. What I am getting at is this, Doctor, you can't tell whether that arose from rust being in the eye, from the trauma or from some other undescribed trauma of some kind, or whether it is due to infection, is that right?

A. It must be an infection to leave a scar of any consequence.

Q. Doctor——

A. The infection may follow the rust, that is quite right. [115]

Q. The infection may be induced by the presence of rust or by trauma or something of that kind?

A. (No response.)

Q. At the time you examined him initially in December, 1949, you say that the vision in the left eye was 20/200?

A. Yes.

Q. That is what you found?

A. Yes.

Q. The records of the Marine Hospital which you have examined show that in June, 1949, some roughly six months before, he had vision of 20/300, I believe, in the left eye.

A. I don't remember the figures, but that is probably correct.

(Testimony of Dr. Samuel F. Boyle.)

Q. It is a fact, is it not, Doctor, that when the vision has reached that state where you find 20/200, the vision is considerably below normal, isn't it?

A. Yes, yes.

Q. And you making an examination might conclude his vision to be 20/200, and somebody else making an examination at the same time might find it as low as 20/300?

A. There isn't very much difference.

Q. It has reached the state where it can do little more than distinguish between light and dark, not a great deal; isn't that a fact, Doctor?

A. Oh, yes, they can do quite a bit more than that.

Q. Am I correct in my assumption that 20/200 means that at a [116] distance of twenty feet he can read letters on your chart or distinguish objects that you would expect a person with normal vision, 20/20 vision, to read at 200 feet?

A. That is right.

Q. At the time you made the examination in December of 1949 you found a scar on the center of the cornea, is that correct? A. Yes.

Q. Did you find and were you able to tell from your examination whether or not that scar extended over to the position of eleven o'clock, which the Marine Hospital records show that there had previously been a scar?

A. No, I can't say. I made a little diagram, but it doesn't show that.

Q. At the time you made the examination you

(Testimony of Dr. Samuel F. Boyle.)

weren't aware of the fact that there was a previous history of a scar at eleven o'clock, were you, Doctor? A. No.

Q. So you didn't have that fact in mind when you made your examination and you didn't examine it with a view of determining whether or not this extended into the eleven o'clock scar or whether this was the same scar? A. No.

Q. Were you able, from your examination of December, 1949, to determine anything with respect to the age of the scar, how long it had been [117] there?

A. It was a well-healed, deep, firm scar, and from the appearance of it I assumed it had been there for some time.

Q. Could it have been a scar occasioned as early as April or May of 1949, the year in which you made your examination?

A. It might have been that old.

Q. It might have been that old?

A. Or older.

Q. It wouldn't be unreasonable to assume from your examination that it was caused by an injury in April of 1949? A. No.

Q. Now I believe you said, Doctor—and correct me if I am mistaken—that scarring is caused by infection—corneal scarring?

A. It is the healing process after infection.

Q. It is the healing process after infection, and the infection may be induced either—I will with-

(Testimony of Dr. Samuel F. Boyle.)

draw that. Infection to the cornea must be induced by something external to the eyeball or the cornea itself; is that correct, Doctor?

A. Well, it may come from within the system, of course. A person may have an ulcer without any injury or without any external infection, coming from the lids or any place like that.

Q. Ordinarily, Doctor, infection of the cornea which results in scarring results from something being applied externally to the cornea either introduced to the eyelid or through the eye [118] itself?

A. As a rule.

Q. Or from some place outside?

A. We have tubercular scars and so on; they come from the outside.

Q. Could you tell from the nature of the scar whether it was a tubercular scar?

A. No, but they usually don't—

Q. It is reasonable to assume that this is not a tubercular scar? A. Yes.

Q. What other internally induced scars other than tubercular scars are there of the cornea?

A. Well, there are ulcers of the ears in people. For instance, if they have a fever, they may get fever blisters on their lips and also on their eyes, and when the blister breaks, why, then you have an ulcer, an open wound, which produces scarring after it heals.

Q. Can you think of any other internally induced scars?

A. There is the dendritic cultures, which are not

(Testimony of Dr. Samuel F. Boyle.)

uncommon. They produce quite a bit of scarring if they do not heal readily.

Q. Can you think of any other, Doctor?

A. There are virus conditions.

Q. Can you think of any others?

A. In smallpox they may have a pock—pock-mark on the cornea, [119] and there are certain skin conditions, acne rosacea, which breaks out into the eye and produces scarring. There is herpes zoster, which is a breaking out of the face which sometimes involves the cornea and very frequently makes scars; and then there are a number of conditions in which the cause is not known in which people have various illnesses which are common to a group like serious flu, and the cornea breaks down and they have an ulcer and sometimes scarring; frequently not, though.

Q. Does that pretty well exhaust the internal causes?

A. Those are the ones that I think of that come into the office from time to time.

Q. Do you have any reason to suspect that the existence of any of those internal conditions which cause ulceration which you have just described for us were present in this case?

A. Well, we have many cases and all doctors do of people who come in with ulcers of the cornea in which the cause is never found. They are sent to their physicians for examinations and reports often come back that they are healthy, but they still have the ulcers.

(Testimony of Dr. Samuel F. Boyle.)

Q. Well, there would be some sort of an accompanying history to go with any of these internal induced ulcers that you have described, would there not? There would be a history of smallpox in the case of smallpox ulcers, or some high fever of some kind in connection with fever, or acne in connection with them, and so forth, wouldn't there, [120] Doctor? A. With that group, yes.

Q. Did you in your examination of Mr. Sundwall in this case take a history to determine whether or not the scarring you observed might have been due to any of these internal causes for ulceration and scarring? A. No.

Q. You didn't think that it was, did you, Doctor?

A. He gave me a history of getting this material in his eye and he told me before that his eye had been all right.

Q. You don't know what the nature of the material was that was in his eye, do you? You have Mr. Sundwall's description it was some kind of oil or something like that? A. Yes.

Q. That is all you have—is that the only history that you have of what the substance was that got into his eye?

A. Well, I phoned—at the time I knew that was an important point. I phoned around and found it was made by Texaco Company, and I communicated with some man down there, but he couldn't tell me in any kind of language that I could understand what was in it.

(Testimony of Dr. Samuel F. Boyle.)

Q. He couldn't tell you what was in it?

A. I was trying to find out whether it was alkaline or acid or whether there was some tar material in it that might burn the eye. It didn't seem to have any of those things, any that I had experience with that caused scarring of the eye. [121]

Q. Did Mr. Sundwall give you a history that the substance had irritated, had burned his eye?

A. He told me he was pouring it from one vessel to another and it splashed and went in his eye. I wrote down his words, he said while pouring out compound from a barrel to a bucket on shipboard some of the compound splashed into the left eye.

Q. Did you inquire of him whether or not there was any burning sensation or irritation in connection with this?

A. I probably did, yes. "Patient claims that it was painful; washed out by the purser." The purser washed out the eye. He was then on shipboard six days out of San Francisco. He reached Okinawa on May 10th and was sent to the hospital there.

Q. Doctor, without knowing what the substance was, what was in the substance, assuming that it was something that pained his eye, which is the description that he gave you, it would be reasonable to assume that the scarring you observed might have been caused by an irritation set up by that substance which burned his eye, wouldn't it, Doctor?

A. It might.

Q. And if you had no other external causes of

(Testimony of Dr. Samuel F. Boyle.)

any kind which result in it and no history of any of these things which you have outlined to me that might cause it internally, it would be, in your opinion, probable that it caused the scarring, would it not, Doctor?

A. Well, can I answer that a little [122] indirectly?

Q. Of course; I want you to answer it any way that enables you to portray the facts of the thing.

A. In the office we see many people with ulcers and scars of the cornea in the private practice, and more than half of them have ulcers or scars the cause of which we do not know or we cannot discover either. In industrial practice that we have always carried on to some extent and to a considerable extent in the past, many scars and ulcers of course are caused by foreign material in the eye.

Q. Have you completed your answer, Doctor?

A. Yes.

Q. Well, let me put it this way: Any ulceration of the eye which results in scarring is caused by something; is that correct? A. Correct.

Q. All you can do as a physician and eye specialist is take the possible causes and eliminate those which are improbable and arrive at some conclusion as to what causes the scarring; is that right?

A. Yes; if you have all the facts it is very helpful.

Q. And the scarring in this case could have been caused by an irritation of the eye induced by something splashing in it? A. Yes.

(Testimony of Dr. Samuel F. Boyle.)

Q. Doctor, you expressed the opinion that at the time you made the examination, December 20, 1949, you did not feel then an operation was necessary upon the left eye; is that correct? [123]

A. No.

Q. Will you describe as best you can the effect of this scarring upon his vision; that is the vision presumably is reduced to this figure as you put it 20/200 by the scarring. Why is it reduced?

A. The vision is reduced due to the obstruction in his line of vision, and the obstruction is due to the scar.

Q. And that obstruction in the line of vision results in this, doesn't it, Doctor: that the eye is a mechanism for transmitting light and the scarring upon the cornea interferes with the transmission of light to the eye system? That is simplifying it?

A. Yes; it is like trying to look out of a window when the shade is down.

Q. To use your phrase, if nothing was done about that corneal scar, would the shade ever go up?

A. No, not to any extent.

Q. Is it possible, Doctor, that without anything else happening, any other trauma or anything else in the eye, just in the normal process of the development of the eye in what might be set up by the scar itself, that the eyesight might diminish in that eye?

A. Yes.

Q. That is probable, Doctor, isn't it, that as time goes on and if nothing were done about that cornea, it would become more and more opaque?

(Testimony of Dr. Samuel F. Boyle.)

A. No, not unless there was irritation. It might be getting a [124] little better or a little worse. It was a heavy scar. I didn't expect much improvement.

Q. And you wouldn't expect it to get better?

A. No, he wouldn't get his sight back.

Q. To use your words, the only way he can improve with the shade down is to put the shade up?

A. Right.

Q. The only way you could do that would be to have that cornea removed and graft another piece over there, so the light can come in?

A. That is right.

Q. Whether that could be done in any particular case is a matter upon which medical men would differ? A. Quite so.

Q. When you say you did not believe an operation was necessary in this case you told us in fact that this man was almost totally blind in the right eye, did you?

A. Yes, but he couldn't—with the vision that he had when he came to the office he couldn't get the blind pension. The State makes a difference between 20/200 and less than 20/200. He was just on the border line.

Q. Doctor, with the vision that you observed from examining him in December, 1949, would you say that he was capable of holding a ship on its course and watching a compass?

A. No. [125]

Q. I don't know how familiar you are with the

(Testimony of Dr. Samuel F. Boyle.)

sea, but do you think he would be capable of performing the ordinary duties of a seaman about a ship working lines and tackle? A. No, no.

Q. What kind of work could he do with that vision?

A. He might work out on a farm some place, some job like that.

Q. What kind of work could he do on a farm, Doctor, from the standpoint of vision?

A. Well, I recall a case where a man went out to work on his son's farm. He did the plowing. He could follow the plow, and they had a pattern. He could see the lines of trees. He had no difficulty with 20/200. They don't get the blind pension, so it is generally conceded that they are able to earn some money some way.

Q. Assuming, Doctor, his vision as it was in 1949 was recorded by the Marine Hospital at 20/300, and assuming he had a vision of 20/300, do you still think he would be able to work on a farm?

A. No, I don't believe he would be very useful on a farm with that vision.

Q. The difference between 20/200 and 20/300?

A. The housewife does her duties with 20/300 around her own home.

Mr. Pinney: I won't ask you how good the dusting is.

I have no further questions. [126]

(Testimony of Dr. Samuel F. Boyle.)

Redirect Examination

By Mr. Cooper:

Q. I just want to ask one question. Doctor, assuming that this patient was in the Marine Hospital in the year 1941 and 1942 and that that record shows acute iritis, and that in 1946 he was also in the Marine Hospital, during which time there was an examination of the eye and eye history put down. Would you say there is any possibility that if there was a corneal scar at eleven o'clock as described in the record of 1948 that it would not be put down?

A. It should be put down.

Q. Well, would any ordinarily careful doctor put down that sort of a thing if he observed the eye?

Mr. Pinney: Your Honor, I am going to object to that. This is highly speculative. We are not trying the staff of the Marine Hospital for malpractice.

The Court: The objection is sustained.

Q. (By Mr. Cooper): Doctor, in a number of places and particularly when this patient first came to the Marine Hospital on June 24, 1948, they described the scar as "old leukoma." Now if this scar which they described, Doctor, was due to an injury, we will say happening the latter part of April of that same year, would it be likely that they would describe that as an old leukoma?

A. Leukoma means a deep, heavy scar, and I think that the average eye man when he says that

(Testimony of Dr. Samuel F. Boyle.)

it is an old scar it means it [127] dates back a year at least, perhaps many years.

Q. If the history of this case shows treatment; that is, in the nature of bandages and putting ointments or things of that general nature or drops in the eye, first at Okinawa about May 12th of that year and then later in the Honolulu hospital and then later in the Marine Hospital, would you say you would expect to find an old, deep scar at that stage of the condition? Do you understand the question?

A. Yes. By an old deep scar is meant that the scar dates back to some previous occasion and not related to the present condition, as a rule. That is the way we use the term in our office.

Q. I take it, when you said "yes" then, Doctor, in view of the rest of your answer you meant "no"; that is, it would not be described as an old deep scar if it were caused by this particular instance?

A. No; that is right.

Mr. Cooper: That is all.

Recross-Examination

By Mr. Pinney:

Q. Doctor, may I ask you a few questions with respect to the last thing counsel asked you about? Do you still have that little card from the Marine Hospital with you? A. Yes, I have.

Q. Referring to the entry of November, 1948, I believe that entry shows, if my recollection is correct, 20/80 vision in the [128] left eye?

(Testimony of Dr. Samuel F. Boyle.)

A. I don't see it here on the '48 page, but on '46.

Q. On the '46 page you get——

A. 20/80 without correction and 20/40 with correction.

Mr. Pinney: May I see that, Doctor? I understood the doctor testified yesterday he found that in '48.

Mr. Cooper: I believe that is in the record.

The Witness: It might be on the next page.

Q. (By Mr. Pinney): I direct your attention to the back of this November, '48, entry.

A. Oh, yes; I didn't turn the page.

Q. There are two entries there, Doctor; there is one in light blue ink and there is one in dark ink. I can't tell from my examination of that whether that entry in light blue ink which gives visibility in the left eye at 20/80 is from the November, '48, examination or from the March, 1949, examination. Can you tell from your knowledge of the manner in which records are kept to which that entry in light blue ink relates?

A. The stamp date is November 3, 1948.

Q. So you would assume that it was November of 1948 that that 20/80 relates to; is that correct?

A. Yes.

Q. Reading, Doctor, that March, 1949, entry in the darker ink, is there anything in that which reflects upon the extent of visibility out of the left eye? [129]

A. Would you repeat the question for me? I was looking——

(Testimony of Dr. Samuel F. Boyle.)

Q. Yes. Is there anything in that March, '49, entry, that is the one in the darker ink, which relates to the extent of visibility out of the left eye?

Mr. Cooper: March 11, '49, was it, Counsel?

The Witness: Yes.

Mr. Pinney: I don't know the precise date.

Mr. Cooper: I think he has it there.

A. March 11, '49. It says nothing about vision.

Q. (By Mr. Pinney): Nothing about the left?

A. Nothing about the vision, left.

Q. What does it say about the left eye?

A. "Left eye, scarring of cornea, deep—with some synechia"—which means adhesions—"and pigment therein. Small area of cataract formation in left lens. No further treatment at this time."

Q. Doctor, I believe that when I asked you about this condition that you observed at the time of your December, '49, examination as to whether or not you would expect his vision to get worse in the left eye, you said it should remain more or less static, there might be some fluctuation; is that right?

A. Yes; it was healed then.

Q. Doctor, if the man had at the time of the November, 1948, examination at the Marine Hospital that scarring which you found at the time of your December, 1949, examination, his vision [130] would have been considerably less than 20/80, wouldn't it?

A. I didn't quite understand that.

Q. Is it possible that in November, 1948, when the Marine Hospital found 20/80 vision of this left

(Testimony of Dr. Samuel F. Boyle.)

eye that the man could have had the scarring that you found in your December, 1949, examination?

A. Yes.

Q. You think that is possible?

A. In '48? It says he has a scar.

Q. I know it says he has a scar. It says he has 20/80 vision, too, Doctor.

A. Yes. Well, I assume that the reduction of vision is due to the scar at that time.

Q. At the time you examined him you found a vision of 20/200? A. Yes.

Q. Is it reasonable to assume that with the same scar that you saw when the vision was 20/200, which the Marine Hospital in June, 1949, found 20/300, that in November, 1948, there would be vision out of the same eye——

A. No, something must have been different.

Q. There must have been some change of the scar? A. Yes.

Q. As of March, 1949, when this man was last examined and before this incident relating to the trial. There is no indication of what his vision was in the left, according to those [131] records?

A. Before '49?

Q. No, March, 1949—I think you examined the records. A. Yes.

Q. It doesn't say what his vision is out of his left eye? A. No.

Q. Do you think it is reasonable to suppose, Doctor, since there is no entry about it, that it would be substantially the same as what preceded

(Testimony of Dr. Samuel F. Boyle.)

in November, 1948, substantially 20/80 or thereabouts?

Mr. Cooper: I think that is the same question that was objected to on cross-examination.

The Court: Well, I will have to sustain the objection.

Mr. Pinney: Very well.

Q. Are you satisfied, Doctor, from your examination of this man and from your general medical knowledge as an expert in this field, that there must have been some scarring since November of 1948 to produce the diminution of vision which you saw in December of '49? A. Yes.

Q. Something happened?

A. Something happened.

Q. In that year to cause more scarring?

A. Yes.

Q. Is that correct, doctor? [132]

A. That is right.

Mr. Pinney: I have no further questions.

Further Redirect Examination

By Mr. Cooper:

Q. I just want to ask you one other question, in regard to the scar condition that existed in December, 1949, which you found, Doctor, and you told us in reference to that condition that it could get better or get worse. A. Yes.

Q. That is correct. Is or is not the same true of the scar condition which existed which is de-

(Testimony of Dr. Samuel F. Boyle.)

scribed as a deep scar in that cornea on March 11, 1949; could that not also get worse? A. Yes.

Mr. Cooper: That is all.

Further Recross-Examination

By Mr. Pinney:

Q. Doctor, maybe I misunderstood your testimony when I examined you. Didn't I understand you to say that as of December of 1949 when you found this 20/200 vision, that that would be more or less static; that it might get a little better or a little worse; it would be substantially the same?

A. Yes. Deep scars are not likely to change a great deal in either direction. You have these things happen, and you have to live with the expectation that they do not get much better or do not get much worse.

Q. The scar that you found in December of 1949 was a deep scar? [133] A. Yes.

Q. And from that time on you wouldn't expect any great worsening in the eye state? A. No.

Mr. Pinney: That is all.

Mr. Cooper: Thank you, Doctor.

The Court: You may be excused, Doctor.

Mr. Pinney: I will stipulate, your Honor, that counsel may read any portion of the deposition he desires into evidence if he will just give me the references as he reads them.

Mr. Cooper: Page 4 commencing with line 9 of his deposition given on January 28th, 1950. This

(Testimony of Dr. Samuel F. Boyle.)

refers to what was done after the mishap, your Honor.

“Q. You know you didn’t go immediately; you know that?

“A. Yes, I know that, because I washed my eye and I never thought anything of it that day.”

That is all.

The Court: Do you have anything further, Mr. Pinney?

Mr. Pinney: No, I have no rebuttal, your Honor. Is that your case, Counsel?

Mr. Cooper: Yes. [134]

Certificate of Reporter

I, Official Reporter and Official Reporter pro tem, certify that the foregoing transcript of 134 pages is a true and correct transcript of the matter therein contained as reported by me (us) and thereafter reduced to typewriting. to the best of my (our) ability.

/s/ W. A. FOSTER.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of Cali-

fornia, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this court in the above-entitled case and that they constitute the record on appeal as designated by the parties:

Libel.

Answer.

Findings of Fact and Conclusions of Law.

Decree.

Notice of Appeal.

Petition for Appeal.

Order Allowing Appeal.

Assignment of Errors.

Citation on Appeal.

Cost Bond on Appeal.

Designation of Record.

Order Extending Time to Docket Apostles on Appeal.

1 Vol. of Reporter's Transcript.

Respondents' Exhibits: B, C, D, E, F, G, I, and J.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court this 17th day of August, 1951.

[Seal]

C. W. CALBREATH,
Clerk.

By /s/ E. H. NORMAN,
Deputy Clerk.

[Endorsed]: No. 13061. United States Court of Appeals for the Ninth Circuit. Edmund E. Sundwall, Appellant, vs. Pacific Far East Line, Inc., a Corporation, Sued Herein as Pacific Far East Steamship Company, Appellee. Apostles on Appeal. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 17, 1951.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 13061

EDMUND E. SUNDWALL,

Libelant-Appellant,

vs.

PACIFIC FAR EAST STEAMSHIP COM-
PANY, FIRST DOE AND SECOND DOE,
Respondent-Appellee.

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY PUR-
SUANT TO RULE 19(6)

To the Honorable Justices of the Court of Appeals
for the Ninth Circuit at San Francisco, Cali-
fornia:

Comes Now Appellant in the above-entitled mat-
ter and respectfully urges and asserts the following
errors in the findings of fact, conclusions of law,
decree and judgment of the Honorable Edward P.
Murphy, District Judge, which are herewith recited
as a statement of points upon which the appellant
intends to rely:

I.

The Honorable District Court erred in disregard-
ing the testimony of libelant as to what equipment
is customary aboard a ship to make it seaworthy.

II.

The Honorable District Court erred in disregard-

ing the testimony of libelant that the boatswain was negligent in ordering work done in the manner in which it was done, that the work was negligently done, and in failing to provide the necessary equipment.

III.

The Honorable District Court erred in dismissing libelant's libel herein.

Respectfully submitted,

BELLI, ASHE & PINNEY,
Proctors for Libelant-
Appellant.

By /s/ VAN H. PINNEY.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 13, 1951.

[Title of Court of Appeals and Cause.]

DESIGNATION OF RECORD MATERIAL TO
THE CONSIDERATION OF APPEAL
PURSUANT TO RULE 19(6)

To the Honorable Justices of the United States
Court of Appeals for the Ninth Circuit at San
Francisco, California:

Comes Now Edmund E. Sundwall, appellant in
the above-entitled matter, and designates the follow-
ing documents, papers, pleadings, decrees, judg-
ments and transcripts to be included in the record
on appeal:

1. Transcript of Testimony.

(a) The testimony of Edmund E. Sundwall, witness called on behalf of libelant-appellant.

(b) Testimony of Dr. Constantine Bricca, witness called on behalf of libelant-appellant.

(c) Testimony of Walter Brunsch, witness called on behalf of respondent-appellee.

(d) Testimony of Dr. Samuel F. Boyle, witness called on behalf of respondent-appellee.

All of the foregoing testimony being reflected in the Reporter's Transcript on Appeal.

2. Pleadings, Documents and Decrees, etc.

(a) Libel in Personam filed in behalf of libelant November 17, 1949.

(b) Answer of the Respondent, Pacific Far East Steamship Company, filed January 23, 1950.

(c) Findings of Fact and Conclusions of Law entered in said cause, filed April 9, 1951.

(d) Final Decree entered in said cause, filed April 10, 1951.

(e) Petition for an Order Allowing Appeal, filed July 6, 1951.

(f) Order Allowing Appeal, filed July 6, 1951.

(h) Citation, issued July 6, 1951.

(i) Cost Bond on Appeal, filed July 13, 1951.

(j) Praeceptum for Apostles on Appeal.

(k) Designation of Record on Appeal, filed July 6, 1951.

Respectfully submitted,

BELLI, ASHE & PINNEY,

By /s/ VAN H. PINNEY,
Proctors for Libellant-
Appellant.

Receipt of Copy acknowledged.

[Endorsed]: Filed September 13, 1951.

[Title of Court of Appeals and Cause.]

STIPULATION AND ORDER

It Is Hereby Stipulated by and between the attorneys for the respective parties hereto that all exhibits in the above-entitled matter, being Respondent's Exhibits A, B, C, D, E, F, G, H, I and J, and Respondent's Exhibit No. 3, may be considered by the above-entitled court in their original state, and need not be reprinted for the record on appeal.

/s/ VAN PINNEY,
Proctor of Appellant.

DORR, COOPER & HAYS,
Proctors for Appellee.

So Ordered Sept. 16, 1951.

/s/ CLIFTON MATHEWS,
/s/ HOMER T. BONE,
/s/ WILLIAM E. ORR,
Judges, U. S. Court of
Appeals.

[Endorsed]: Filed September 27, 1951.

